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Entered

A DIGEST
OF THE
CRIMINAL LAW
OF THE
PRESIDENCY OF FORT WILLIAM
AND
GUIDE
TO ALL
CRIMINAL AUTHORITIES THEREIN.

SECOND EDITION.

PART I.

COMPILED BY
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BENGAL CIVIL SERVICE.

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No alteration has been made in the division or order of this work. It has simply been corrected in accordance with the laws enacted, or the rules laid down, since the publication of the first edition.

The rules, which apply to either the Lower or the Western Provinces only, have been distinguished by the word *Bengal*, or the letters *L. P.* or *W. P.* respectively. But it was considered unnecessary to mark the quotations from the old series of Nizamut Adawlut Reports by any such notation, since all the cases reported in it were tried in the Calcutta court. To all of these a reference has been made in this work, as they were published on account of some authoritative ruling which they enunciated. But this is not the case with the present series in which all trials are reported without exception ; and it has been deemed requisite therefore to quote only a few selected cases from the latter. The present series is referred to as Reports, in order to distinguish it from the old series cited as N. A. R.

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BOOK I.

OF THE COURTS, THEIR POWERS, RULES OF PRACTICE, AND MODES OF CONDUCTING BUSINESS.

CHAPTER I.

OF THE CONSTITUTION AND GENERAL JURISDICTION OF THE CRIMINAL COURTS.

SECTION I.

OF THE RISE, PROGRESS, AND GRADUAL IMPROVEMENT OF THE PENAL SYSTEM.

1. In sketching the history of the system of Penal Law, established by the British Government in India, it seems necessary to recount, in the first place, as concisely as possible, the Acts of Parliament, by which the servants of the East India Company were entrusted with a legislative power in their territorial acquisitions; for it is laid down by Blackstone, that "in conquered or ceded countries, that have already laws of their own, the King may indeed alter or change those laws; but till he does actually change them, the ancient laws of the country remain, unless such as are against the law of God, as in the case of an infidel country." (a)

2. The administration of criminal justice in Bengal, at the period of the East India Company's acquisition of the Dewanny, had been guided for more than two centuries, by the penal system of the Mahomedans, by whom it had been forced upon the Hindoos by right of conquest. The Hindoo criminal code, so long exploded, was indeed but ill-adapted to the actual state of society; and the Hindoos, as well as Mahomedans, had become accustomed to, and acquainted with the ordinances of Mahomed, however defective and irrational, and however much opposed to those principles of law, which respect, alike, the rights of the individual, and the interests of the community. Of this system we shall presently speak more in detail, though in a treatise of this nature it must necessarily occupy but a small space.

3. By the Statute of the 13th George III, chapter 63, section 7, it was enacted, "that the whole civil and military government of the presidency of Fort William, and also the ordering, management, and government, of all the territorial acquisitions and revenues in the kingdoms of Bengal, Behar, and Orissa, shall, during such time as the territorial acquisitions and revenues shall remain in the possession of the United Company, be vested in the Governor General and Council in like manner, to all intents and purposes whatsoever, as the same now are, or at any time heretofore might have been, exercised by the President and Council,

Legislative powers of Government of India.
13th Geo. III.
Chap. 63.

(a) The materials of this sketch have been taken from Harington's Analysis; the Supplement to Colebrooke's Digest of the Regulations; the Fifth Report of the Select Committee of the House of Commons; Mill's History of India; and other works. In some few places the language of these authorities has been adopted, and without the usual acknowledgment implied by inverted commas; as it seemed better to confine these marks to quotations from official documents, which are necessarily frequent.

or Select Committee, in the said kingdoms." And by section 36 of the same Act, it was declared "lawful for the Governor General and Council, from time to time, to make and issue such rules, ordinances, and regulations, for the good order and civil government of the settlement of Fort William &c., as shall be deemed just and reasonable; such rules, ordinances, and regulations, not being repugnant to the laws of the realm," subject only to registry and publication in the Supreme Court of Judicature (then first established) "with the consent and approbation of the said Court."

21st Geo. III.
Chap. 70.

4. By the Act of the 21st George III, chapter 70, the express purpose of which was to explain and amend the Act, from which the above passages are quoted, it was provided in section 23, "that the Governor General and Council shall have power and authority, from time to time, to frame regulations for the provincial courts and councils," under the restriction, that copies should be transmitted to the Court of Directors and to the Secretary of State, and that they should not be disallowed by His Majesty in Council within two years.

37th Geo. III.
Chap. 142.

5. In 1797, the Regulations, which had been already passed under the powers conferred on the Governor General and Council, by the abovementioned Statutes, were expressly acknowledged by the eighth section of the Act 37th, George III, chapter 142, in the following terms—"And whereas certain regulations for the better administration of justice among the native inhabitants and others, being within the provinces of Bengal, Behar, and Orissa, have been, from time to time, framed by the Governor General in Council in Bengal; and among other regulations, it has been established and declared, as essential to the future prosperity of the British territories in Bengal, that all regulations passed by government, affecting the rights, properties, or persons of the subjects, should be formed into a regular code, and printed, with translations, in the country languages; and that the grounds of every regulation be prefixed to it; and that the courts of justice within the provinces be bound to regulate their decisions by the rules and ordinances which such regulations may contain, whereby the native inhabitants may be made acquainted with the privileges and immunities granted to them by the British Government, and the mode of obtaining speedy redress for any infringement of the same: and whereas it is essential that so wise and salutary a provision should be strictly observed, and that it should not be in the power of the Governor General in Council to neglect or to dispense with the same: be it therefore enacted, that all regulations which shall be issued and framed by the Governor General in Council at Fort William in Bengal, affecting the rights, persons, or property of the natives or of any other individuals who may be amenable to the provincial courts of justice, shall be registered in the judicial department, and formed into a regular code, and printed, with translations in the country languages, and that the grounds of each regulation shall be prefixed to it, and all the provincial courts of judicature shall be, and they are hereby directed to be bound by and to regulate their decisions by such rules and ordinances as shall be contained in the said regulations; and the said Governor General in Council shall annually transmit to the Court of Directors of the East India Company ten copies of such regulations as may be passed in each year, and the same number to the Board of Commissioners for the affairs of India."

6. The regulation of the Indian Government, to which reference is made in the above section, is Reg. XLI. 1793, the very words of which have been for the most part adopted;

and, as Mr. Harington justly observes, “ supported upon this firm basis, it may be deemed the corner-stone of the system of regulation and polity, for the internal government of these provinces, which was instituted in the year 1793 by Marquis Cornwallis.” Such adoption of the language and principles of the Indian Government may at least be taken to imply, on the part of the British Parliament, a confirmation of the local power of legislation and an approval of the manner in which that power had been exercised.

7. On the renewal of the Company’s Charter in 1813, the regulations were again acknowledged by section 66 of the 53rd George III, chapter 155, which enacts that “ the Court of Directors should annually lay before both houses of Parliament one copy of all the regulations made by their several Governments in India.”

53rd Geo. III.
Chap. 155.

8. Under the 3rd and 4th Wm. IV, chapter 85, the Governor General of India in Council has “ power to make laws and regulations for repealing, amending, or altering, any laws or regulations whatever now in force, or hereafter to be in force, in the territories of India or any part thereof, and to make laws and regulations for all persons, whether British or Native, foreigners or others, and for all courts of justice, whether established by His Majesty’s charters or otherwise, and the jurisdictions thereof, and for all places and things whatsoever within and throughout the whole and every part of the said territories, and for all servants of the said Company within the dominions of princes and states in alliance with the said Company ;” except as to matters affecting the prerogative of the Crown, or the authority of Parliament, or the constitution or right of the Company; and subject to the disallowance of any such laws and regulations by the Court of Directors. All such laws and regulations are of the same force as an Act of Parliament; and it is not necessary to register or publish them in any court of justice. It is also provided, that a full, complete, and constantly existing right and power is reserved to Parliament to repeal and alter, at any time, any such law or regulation; and that all the laws and regulations are to be laid before Parliament. (a)

3rd and 4th Wm.
IV. Chap. 85.

9. Lastly the Statute 16th and 17th Vict. chap. 95, entitled an Act to provide for the Government of India, alters in some respects the constitution of the legislative council of India and defines what shall be a quorum of that body; but interferes with its powers no further than to enact that the assent of the Governor General shall be essential to the validity of all laws made by the Council, and that no such law shall be invalid by reason only that it affects any royal prerogative, provided it shall have received the previous sanction of the crown.

16th and 17th
Vic. Chap. 95

10. Such are the legislative powers which have been at various times committed by Parliament to the Indian Government. We proceed now to trace the steps, by which the penal system now in force has advanced.

11. On the Company’s first acquisition of the Dewanny, it was deemed advisable to interfere but little with the existing system. Instead of abrogating the Mahomedan criminal law, substituting a new code founded on European experience, and providing new Courts with progressive degrees of power, in which the fear of detection stimulates inertness and

Penal system of
Indian Govern-
ment, rise, pro-
gress, and
improvements of.

(a) Acts of Parliament, expressly relating to India, are binding on magistrates of the Company’s criminal courts, although no Act of the local legislature has been passed for their promulgation. C. O. No. 50 of vol. 4.

overawes injustice ; instead of immediately subverting the existing system, and destroying the old establishments, because they were not based on the principles familiar to the conquerors, or because their functions were ill discharged ; it was wisely determined to introduce improvements with caution and due circumspection. The administration of criminal justice was therefore left to the tribunals previously instituted. Those entrusted with the duties, which are now within the cognizance of our judicial authorities, are thus enumerated in the report of the committee of circuit :—" The Nazim, as Supreme Magistrate, presides personally in the trial of capital offenders ;— the deputy of the Nazim takes cognizance of quarrels, frays, and abusive names ;—the Foujdar is the officer of police, the judge of all crimes not capital ; the proofs of these last are taken before him, and reported to the Nazim for his judgment and sentence upon them ;—the Mohtesib has cognizance of drunkenness and of the vending of spirituous liquors and intoxicating drugs, and the examination of false weights and measures ;—and the Cotwal is the peace-officer of the night, dependent on the Foujdaree."

12. But it would appear that the officers here enumerated were confined to the capital ; for beyond its precincts, the zumeendar, who was originally the chief fiscal officer of a district, exercised both a civil and a criminal jurisdiction almost supreme within the territory over which he was appointed to preside. The minor offences he visited with fines, imprisonment, or corporal punishment, according to his individual pleasure or sense of justice ; and even in capital cases he was under no further restraint than that of reporting the circumstances to the Nazim before proceeding to execution. The government but rarely interfered with his decisions. Thus it ever is with despotic governments ; they do not interpose between their officers and their subjects ; they do not understand the right of the individual as opposed to the general order of the state ; their agents are entrusted with unlimited powers, and in the exercise of them they are left unrestrained. The difference between a despotic and a just government lies in this, that the one revenges, the other punishes ; the one asserts its power with passion, the other calmly vindicates its authority ; the former, unembarrassed with scruples, is content to believe that the real offender is among those who suffer ; the latter is ever filled with a tender apprehension lest the safety of the innocent should be endangered, and lest the powers appointed to protect the people, should be perverted to oppress them.

13. But even if the institutions of the native government had been in themselves excellent, it would yet be no cause for wonder that the administration of justice ceased at a time, when the government of the country underwent a total change, when the Nazim was left without power to maintain the authority of his tribunals. The best instruments may be applied to the vilest purposes ; and as an establishment, however good the principles on which it is founded, must fall to the ground, if the check of supervision is neglected in practice, so institutions, which have been perverted to accomplish only evil, may be capable of producing much good, if the conduct of the ministerial officers is attentively and fitly inspected.

14. The British Government therefore commenced by providing means for superintending the native tribunals. In August 1769, certain servants of the Company, under the title of supervisors, were stationed in appropriate districts throughout the country with this intent ; and in the next year two councils, with authority over the supervisors, were stationed

one at Moorshedabad, and another at Patna. In 1772 additional experience allowed the Government to create new courts, and to furnish them with certain rules, which were drawn up by the committee of circuit, and adopted by the President and Council on the 21st August of that year. In the report which accompanied these regulations, the committee observed—"we have confined ourselves, with a scrupulous exactness, to the constitutional forms of judicature already established in this province, which are not only such as we think in themselves best calculated for expediting the course of justice, but such as are best adapted to the understanding of the people; where we shall appear to have deviated, in any respect, from the known forms, our intention has been to recur to the original principles, and to give them that efficacy, of which they were deprived by venal and arbitrary innovations, by partial immunities granted as a relief against the general and allowed abuse of authority, or by some radical defect in the constitution of the courts in being." By this scheme a court of criminal judicature was established in each district under the denomination of Foudaree Adawlut, in which a Kazee and Mooftee, with the assistance of two Moulavies, as expounders of the law, were appointed to hold "all trials of murder, robbery, and theft, and all other felonies; forgery, perjury, and all sorts of frauds and misdemeanors, assaults, frays, quarrels, adultery, and every other breach of the peace, or violent invasion of property;" and it was also declared to be the duty of the Collector of the district (he being a covenanted servant of the Company) "to attend to the proceedings of this court so far as to see that all necessary evidences are summoned and examined; that due weight is allowed to their testimony; and that the decision passed is fair and impartial according to the proof exhibited in the course of trial; and that no causes be heard or determined but in the open court regularly assembled." A separate and superior court of criminal jurisdiction was at the same time established at Moorshedabad, under the designation of Nizamut Sudder Adawlut, in which was to preside, by the title of daroga, a chief officer, appointed on the part of the Nazim, assisted by the chief kazee, the chief mooftee, and three capable moulavies whose duty it was declared to be "to revise all the proceedings of the foudaree adawlut; and in capital cases, by signifying their approbation or disapprobation thereof, with their reasons at large, to prepare the sentence for the warrant of the Nazim." A control over the proceedings of this court, similar to that which the collectors of revenue were empowered to exercise over the provincial courts, was vested in the committee of revenue at Moorshedabad, and the object of such control was stated to be "that the Company's administration, in character of King's Dewan, may be satisfied, that the degrees of justice, on which the welfare and safety of the country so materially depend, are not injured or perverted by the effects of partiality or corruption."

15. Certain rules were supplied for the guidance of these courts; the collector was directed to keep a box, under his own key, at the door of the cutcherry for the reception of petitions; complete records were to be kept by the foudaree adawluts, and transmitted to the superior courts twice every month; the collector also was to keep an abstract register of all the proceedings of that court, to be transmitted in like manner; the authority of the foudaree adawlut was to extend to corporal punishment, imprisonment, sentencing to the roads and fines, but not to the life of the criminal; in capital cases the trial was to be forwarded

to the Nizamut Adawlut, and ultimately to be laid before the Nazim ; persons guilty of misdemeanors, whose rank, caste, or station in life was thought to exempt them from corporal punishment, were made liable to fines ; but such fines if above one hundred rupees were not to be enforced by the inferior courts ; forfeiture and confiscation of the property of felons was to depend on the Nizamut Adawlut. Stringent penalties were enacted against dacoits ; and threats of dismissal or fines and promises of rewards were held forth to the thanadars and paiks.

16. By these arrangements, it will be observed, the judicial administration was alone affected ; the law itself remained the same, with the exception of an additional and more severe provision respecting dacoity ; and with the system of police no interference was attempted.

1773. 17. In the following year we find it a matter of consideration with the President and Council whether the decree of the Nizamut Adawlut, after having received the confirmation of the Nazim, should be carried into execution precisely in the terms of his warrant ; or whether the Government should interfere in adding to, or commuting, the punishment, in cases wherein it appeared inadequate to the crime or ineffectual as a check. And the result was the appointment of the daroga of the Nizamut Adawlut, which court had previously been removed to Calcutta, “ to affix the seal of the Nazim, and the signature on his behalf to warrants issued for the execution of sentences approved by the court,” and a power vested in the President “ to superintend him in the exercise of this office, as well in revising sentences of the Adawlut, as in passing the warrants and affixing the seal.” However beneficial the control over the administration of criminal justice thus entrusted to the President, a short experience proved that it imposed a labor and involved a responsibility, which
1775. it was inconvenient to him to sustain ; and consequently, in October 1775, the Nizamut Adawlut was removed back to Moorshedabad, and the uncontrolled administration of criminal justice was confided to the Naib Nazim, by whom foudjars, assisted by persons versed in the Mahomedan law, were appointed to superintend the criminal courts in the several districts, and to apprehend and bring to trial offenders against the public peace.

Police, 1774. 18. In the meanwhile, April 1774, the police establishment had been remodelled by Mr. Hastings with the concurrence of his Council. The collectors and aumils had been acting as magistrates, but the want of an efficient police had thus early shown itself in the “ increased confidence of the dacoits,” and in the difficulty with which Government obtained “ intelligence of such events as related to the peace of the country.” These evils were ascribed by Mr. Hastings to the abolition of the foudjaree jurisdiction of the zumeendars ; to the resumption of the chakeran land, and the employment by the farmers of the servants, allowed to them by Government solely for the business of their collections ; and to the farming system, which removed the claim on the zumeendars formerly possessed by the public from immemorial usage to the restitution of all damages and losses sustained from robbers. The remedies adopted for the removal of these disorders were that thanadars were appointed to the fourteen districts, into which Bengal was divided, for the various purposes of police ; that the landholders and officers of the collections were enjoined to afford them all possible assistance in the discharge of their duties ; that the land servants allowed for their respective

districts were placed under the absolute command of the foudjars; that the chakeran lands were again applied to their original design; that the foudjars were enjoined to assist each other in their respective jurisdictions; that an office for the superintendence of the foudjars was established under the control of the President; that the landholders were made responsible for losses sustained by their neglect to assist the foudjars; and that all persons convicted of abetting or conniving at the practices of robbers were to be adjudged equally criminal with them, and to be punished by death.

19. On the 6th April 1781, it was declared that this system had by experience been found not to produce the good effects intended by the institution; the general establishments therefore both of the foudjars and thanadars were abolished by a resolution of the Governor General and Council; and the English judges of the several civil courts, being Company's covenanted servants, "were invested with the power, as magistrates, of apprehending dacoits and persons charged with the commission of any crimes or acts of violence, within their respective jurisdictions."

1781.

20. They were not however empowered to try or punish such persons; nor to detain them in confinement; but "were to send them immediately to the daroga of the nearest foudjaree court with a charge in writing, setting forth the grounds on which they had been apprehended." Provision was at the same time made for cases "where, by especial permission of the Governor General and Council, certain zumeendars might be invested with such part of the police jurisdiction as they formerly exercised under the ancient Mogul government."

21. In such cases, the judge of the Dewanny Adawlut, the daroga of the foudjaree court, and the zumeendar, were to exercise a concurrent authority for the apprehension of robbers and all disturbers of the public peace. The better to enable the government to observe the effects of the regulations thus introduced, and to watch over the general administration of criminal justice throughout the provinces, a separate department was established at the presidency, under the immediate control of the Governor General, to receive monthly returns and reports from the judges, zumeendars, and the Nazim; to arrange which, and to maintain "an effectual check on all persons employed in the administration of justice, as well as for such other purposes as his experience might suggest," an officer was appointed to act under the Governor General, with the title of Remembrancer of the Criminal Courts.

22. These provisions proved inadequate; they contained one capital defect; the power of the English magistrates over the zumeendars and other landholders was not only inefficacious in general, and the course of justice therefore weak and uncertain, but "the regulation which vested the apprehension of all offenders in the magistrates without permitting them to interfere in any respect in the trials, gave rise to a new evil. The magistrates being obliged to deliver over to the darogas of the foudjaree courts, and to that officer's prison, all parties charged with a breach of the peace however trivial, and a considerable time often elapsing before they were brought to trial, many of the lowest and most indigent classes of people were frequently detained for a long period in confinement, where the length of their sufferings very often more than equalled their demerits."

1787.

23. In June 1787, therefore, a new regulation "for the administration of justice in the criminal courts in Bengal, Behar, and Orissa," was passed by the Governor General in Council; and at the same time the offices of judge, collector, and magistrate, (except in the cities of Dacca, Moorshedabad, and Patna) were united in the same person, but under distinct rules for his guidance in each capacity. By this regulation it was made the duty of the magistrate "to apprehend all murderers, robbers, thieves, house-breakers, or other disturbers of the peace, and to send them to take their trial, accompanied with a written charge in the Persian language, to the nearest foudaree court." He was further "invested with power to hear and determine without any reference to the foudaree courts, all complaints or prosecutions brought before him for petty offences, such as abusive language or calumny, inconsiderable assaults or affrays, and to punish the same when proved by corporal punishment not exceeding 15 ratans, or imprisonment not exceeding the term of 15 days; but in all cases affecting either the life or limbs of the party accused, or subjecting them to a greater punishment than that above specified, the case was to be remitted, as above prescribed, to the nearest criminal court. In the case of groundless and vexatious complaints, the magistrate was authorized to inflict a fine not exceeding 50 or 200 rupees, according to the supposed wealth of the offender, the distinctions being the same as those since preserved in section 8, Regulation IX. 1793. The daroga of the foudaree adawlut was declared to be totally independent of the magistrate, as far as related to the trial of causes, but subject in every respect to the Naib Nazim. Various rules for the guidance of the magistrates and the foudaree courts were at the same time enacted;—all complaints with the orders upon them were to be recorded in the magistrate's office, both in English and Persian, copies of which with the result of each case detailed in a given form were to be sent monthly to the remembrancer of the criminal courts;—the magistrate was not to detain in confinement beyond 2 days any person accused of an offence not within his competency to try;—he was to inspect the jails, which were under the care of the daroga, and to report thereon to the Governor General, "that the necessary representations might be made to the Naib Nazim;"—a report was to be made to government of any landholder committed for trial; and European British subjects were to be committed under certain rules to the Supreme Court. It was declared at the same time that "all Europeans, not British subjects, were equally amenable with the natives to the authority of the magistrate within his own district, and to the foudaree court to which they might be committed." The darogas were directed to transmit to the Naib Nazim copies of their proceedings at large, and to furnish him with various returns regarding the jail and the maal-khana; and they were to deliver to the magistrate, for submission to the Governor General, monthly statements of the cases decided by them, and of the disposal of prisoners committed to them for trial. The officers of the foudaree courts were to be appointed by the Naib Nazim, and were required to hold courts at least three times a week throughout the year. Other provisions were added regarding the establishments allowed for the various courts, and the manner in which the bills for all expences were to be drawn.

24. The power thus vested in the magistrates to take cognizance of petty offences, obviated in some degree the hardship and inconvenience, which had before been experienced

from the necessity of delivering over for trial to the daroga of the foudjaree court all parties charged with a breach of the peace however slight, or any other criminal act however trivial in its nature and consequences. But as all crimes of consequence were still exclusively cognizable by the Naib Nazim and his subordinate officers; as the sentences of the Nizamut Adawlut were final and not notified to the Governor General until they had been carried into execution; as the judges and officers of the inferior criminal courts were appointed by the Naib Nazim; and as he possessed an almost exclusive control over those courts and their proceedings; many defects in the Mahomedan law, and abuses in the administration of it, were left unremedied, and placed beyond the control and ameliorating influence of those who were alone willing to suppress them. The Court of Directors had desired in their primary instructions to Lord Cornwallis in 1786, that "the trial and punishment of offenders against the public peace should be left with the established officers of the Mahomedan jurisdiction, who were not to be interfered with beyond what the influence of the British Government might effect through occasional recommendations of forbearance to inflict any punishment of a cruel nature." But his Lordship found himself compelled very early to bear testimony to the inefficacy of such measures "to prevent, on one hand, the cruel punishments of mutilation, which are frequently inflicted by the Mahomedan law, and on the other to restrain the spirit of corruption, which so generally prevails in native courts, and by which wealthy offenders are generally enabled to purchase impunity for the most atrocious crimes." In conformity with this opinion, the Governor General in Council determined in December 1790, to introduce an entirely new system, and to take into his own hands the superintendence of the administration of criminal justice throughout the provinces.

25. But before detailing the provisions which introduced this very important change, it seems useful to note the argument from which he deduced, that government held a right legally sanctioned to alter the Mahomedan law: it is clearly stated in a minute by Lord Cornwallis, dated December 1st, 1790, and it is worthy of remark that the framers of the celebrated "Fifth Report," sanctioned by the House of Commons in 1812, have adopted his Lordship's opinions, and even the words in which they were expressed. He writes: "With a view to ascertain more particularly the nature and causes of the defects (in the administration of criminal justice), and to collect the necessary information for remedying them, I directed some queries to be stated to the magistrates of the several districts, from their answers to which it will appear that the evils complained of proceed from two obvious causes: first, the gross defects in the Mahomedan law; and secondly, the defects in the constitution of the courts established for the trial of offenders. A provision against the first of these defects cannot otherwise be made than by our correcting such parts of the Mahomedan law as are most evidently contrary to natural justice and the good of society. That this government is competent to such an amendment of that law, as may appear thus essentially necessary, cannot, I think, admit of a doubt; since being entrusted with the government of the country, we must be allowed to exercise the means necessary to the object and end of our appointment; besides that we appear to possess a sufficient legal recognition of the right in question from this, that the alterations made in the established Mahomedan law

Right of Government to alter the Mahomedan law.

of the country by the first code of judicial regulations of 1772, and more particularly that entire alteration, and new and very severe provision therein contained, for the punishment of dacoits, together with the superintendence and control over all the new criminal courts, which the said regulations vested in the Company's covenanted servants, stand both fully submitted to parliament in the sixth report of the committee of secrecy, already quoted, as a discretionary Act of legislation by the President and Council in the year 1772; and yet so far was the parliament from disapproving thereof, or limiting in any respect the authority of our government in India, that with this information before it, and having these reports as the ground work of the law then passed, the Act of the 13th George III, chapter 63, section 7, vests the ordering, management, and government, of all the territorial acquisitions and revenues in the kingdoms of Bengal, Behar, and Orissa, in the Governor General and Council, for such time as the territorial acquisitions and revenue shall remain in the possession of the said Company, in like manner (as the said Act recites), to all intents and purposes whatever, as the same now are, or at any time heretofore might have been, exercised by the President and Council, or select committee, in the said kingdom. And as it was then before the legislature that the President and Council had interposed, and altered the criminal law of the country, such alterations, and all future necessary amendments thereof, appear, by the above clause, to be legally sanctioned and authorized."

26. It is necessary only to add to this that all subsequent Acts of Parliament, which have entrusted to the Government of India renewed or increased powers of enacting laws, have in no way restricted them in amending the Mahomedan criminal law. In the conclusion of the minute quoted above, Lord Cornwallis proposed to introduce four modifications of that law by a formal enactment; first, that the apparent intention of a murderer, and not the manner or instrument of perpetration, should constitute the rule for determining his punishment; secondly, that in all cases of murder the relations of the deceased should be debarred from pardoning the offender, and that the law should be left to take its course without any reference to their wishes upon all persons convicted thereof;—thirdly, that other punishments should be substituted for mutilation; and fourthly, that heinous offenders should be admitted to become witnesses against each other in the manner of king's evidence in England. Three out of the points which he thus brought forward, as those most repugnant to the principles, or inadequate to the ends, of justice, were the same as those, which Mr. Hastings had advanced in 1773, as reasons for that system of interference with the decrees of the Nazim, which he instituted and superintended;—but as they had never been formally abrogated, the Naib Nazim had doubtless considered as of no effect such innovations in practice on the prescribed rules of the Mahomedan law.

27. It seems unnecessary to follow Lord Cornwallis in the observations which he recorded on the second defect above mentioned, viz., the imperfect constitution of the criminal courts, because they must be generally obvious to all, who consider the facilities to a dishonest tampering with justice, and the unavoidable delay between the primary investigation by the police-magistrate and the final sentence by the Naib Nazim, which such a system necessarily produced. The correctness of his conclusion, that "the future control of so important a branch

of Government ought not to be left to the sole discretion of any native, or indeed of any single person whomsoever," is sufficiently apparent. As such control must necessarily be exercised by the Government itself, and as it is "essential for the prevention of crimes, not only that offenders should be deprived of the means of eluding the pursuit of the officers of justice, but that they should be speedily and impartially tried when apprehended," it was determined to create a new machinery. Judges of circuit were appointed to the duties hitherto performed by the foudaree darogas, and the place of the Naib Nazim was supplied by the Governor General and Council.

28. By the regulations passed on the 3rd December 1790, the court of Nizamut Adawlut was again removed from Moorshedabad to Calcutta, the duties of the court being undertaken by the Governor General and the Members of the Supreme Council, assisted by the local cazee of Bengal, Behar and Orissa, and two mufties; and a register was appointed for the conduct of the executive business of the court, the office of the Remembrancer being merged therein. The powers of the court were declared to be those "lately vested in the Naib Nazim;" and their decisions were in all cases to be regulated by the Mahomedan law, except as far as the restrictions passed in accordance with Lord Cornwallis's two first propositions, noted above; but the applicability of the law to the circumstances of the case was to be determined by the cazee-ool coozat and the mufties.

28. Four courts of circuit, superintended respectively by two covenanted civil servants of the Company, and each having a cazee and muftie to assist the judges and to expound the law, as well as an executive officer called the register, were at the same time established for the trial of offences not punishable by the magistrate; and they were directed to hold two general jail deliveries annually at the stations of the several magistrates within their divisions. In cases of acquittal, and of punishment less than death, or imprisonment for life, in which the judges of the court of circuit might approve of the futwa of their law officers they were empowered to pass a final sentence; but in cases of death or perpetual imprisonment, as well as in all cases where the judges might "see cause to disapprove either on the ground of the trial or the futwa," they were required to transmit their proceedings for the final sentence of the Nizamut Adawlut. Rules of practice were at the same time enacted for the various functionaries; in which all the provisions of the preceding regulation of 1787, applicable to the new system, were re-enacted; and further, a regular system of investigation was prescribed to the magistrate and the superior courts in all complaints; the whole of the proceedings being committed to writing. Murder, robbery, theft, and house-breaking were at the same time declared to be unbailable offences; and French subjects were placed on the same footing as European British subjects.

30. The regulation thus enacted continued in force, with a few alterations and additions until 1793. But as the whole was embodied in the regulations published in that year, and still forms a part of the existing code of laws, it is unnecessary to detail here the various improvements which time and experience produced.

31. In December 1792, the police system was entirely remodelled; it was found, that "the clause in the engagements of the landholders, by which they were bound to keep the

peace and, in the event of any robbery being committed in their respective estates, to produce both the robbers and the property plundered, had become not only nugatory, but in numerous instances had proved the means of multiplying robberies and other disorders, from the collusion which subsisted between the perpetrators of them, and the police entertained by the landholders." All powers were therefore taken away from the landholders: the country was divided into jurisdictions of about ten coss square; and a daroga with an establishment of officers was appointed to each. The regulation, which introduced this system, was republished, with some slight modifications, in the following year, as part of the permanent code of Bengal, Reg. XXII, 1793; and it is therefore needless to advert further to its provisions in this place.

32. The system of internal administration, thus adopted in 1793, referred only to Bengal, Behar and Orissa. We must therefore briefly advert to the other provinces and portions of territory over which the British rule now extends.

Benares.

33. In the province of Benares, which was ceded to the Company in May 1775, the administration of justice was committed, subject to the control of the zumeendar, to the aumils or native collectors of the revenue, who were guided, in the exercise of this trust, chiefly by unwritten custom. In October 1781, the British Government first interfered in the interior administration of the province, and appointed a chief magistrate to the superintendence of a civil and criminal court, and a cutwalee, or office of police, in the city of Benares. He was authorized to frame rules of practice for these courts, subject to the approbation of the government at Calcutta, to whose authority alone he was subject. In 1788, courts of judicature were established, under the superintendence of native magistrates, in the towns of Ghazeepore, Juanpore, and Mirzapore; and a moolkee (or country foudaree adawlut was erected with a criminal jurisdiction over the whole province of Benares, with the exception of the city and the three towns above-mentioned. In all these courts (with the exception of cases which had relation to caste or marriage amongst the Hindoos) the futwas were directed to be delivered in conformity to the Mahomedan law, and the resident at Benares was vested by the Governor General in Council with authority to superintend, revise, and sanction their proceedings, except in the case of sentences of a capital nature or inflicting any severe punishment. The resident was likewise authorized to exercise the powers of magistrate throughout the province, with authority to apprehend offenders, and to commit them to the criminal courts for trial. It being deemed objectionable to condemn brahmins to capital punishment within the province, a rule was passed in 1790, declaring all persons of that caste, condemned to death under the Mahomedan law, liable to transportation beyond sea. Certain other special rules regarding brahmins were promulgated; as well as the same amendments of the Mahomedan law as had already been introduced into the lower provinces. These minor reforms had been effected with the consent of the Rajah, who still retained a nominally sovereign authority; but on the 27th October 1794, an agreement was made with him, by virtue of which it was settled that the Governor General in Council should "introduce the same system and rules for the administration of justice, and for the concerns of the revenue, as were, in 1793, established within the provinces of Bengal, Behar, and Orissa;"

and accordingly the same code of criminal law was extended, with little alteration, to the whole province of Benares; courts were constituted on similar principles, and a similar system of police was introduced, by the regulations passed on the 27th March 1795.

34. In November 1801, the Nawab Wuzer ceded to the Company by treaty certain districts in Oude, which have since been divided into the following zillahs; Moradabad, Bareilly, Etawah, Furruckabad, Cawnpore, Allahabad, and Goruckpore. At first (says the fifth report) "these districts were placed under the superintendence of a Lieutenant Governor and Board of Commissioners, to whom were confided the settlement of the revenue and the formation of a temporary scheme of internal administration, which was intended to continue, till sufficient information should be acquired of the circumstances of the country, to warrant the establishment of a more permanent system. Under this temporary provision, the European civil servants of the Company, acting under the orders of the Lieutenant Governor, and stationed in the districts into which the acquired territory was divided, possessed individually the entire civil authority, officiating as collectors of the revenue and judges and magistrates within their respective limits." The commissioners were required to assist the government in the formation of regulations; and also "to superintend the administration of the laws over a great extent of country, and over a race of people, unaccustomed to any regular system of order or law, and habituated to commit the utmost excesses of violence and oppression." The administration thus formed continued however for little more than a year; when, as the objects which the Government had had in view appeared to have been fulfilled, the commission was dissolved; and the Bengal regulations were introduced into the ceded provinces, being republished with such modifications, as the condition of the natives rendered advisable, under date the 24th March 1803.

Ceded Provinces.

35. The district of Bundelcund was ceded to the Company by the Peshwah on the 16th December 1803; and on the 30th of the same month, Dowlut Rao Scindiah ceded "certain territories, forming part of the Dooab, or country situated between the rivers Ganges and Jumna, and on the right bank of the Jumna." These were divided into the Zillahs of Bundelcund, Panniput, Seharunpore, Allyghur, and Agra, by section 3, Regulation IX. 1804; but Zillah Panniput, which included the city of Delhi, and the territory situated on the right bank of the river Jumna, was afterwards (by section 4, Regulation VIII. 1805) assigned to his majesty Shah Alum, and declared not subject to any of the general laws or regulations of the British Government. During the continuance of the Mahratta war, these provinces were placed under the control of the Commander-in-Chief, Lord Lake, whose orders the civil servants entrusted with the immediate charge of them were directed to obey; but by Regulation IX. 1804 (passed on the 14th December) the Government extended to these provinces the criminal regulations, which had recently been introduced into the ceded districts of Oude and the vicinity, and of which the similar habits of the people rendered little modification necessary.

Conquered provinces.

36. The pergunnahs of Sonk, Sonsa, and Sahar, in Zillah Agra, parts of the conquered provinces (as those ceded by the Peshwah and Scindiah were officially designated), were subsequently given up to the Rajah of Bhurtpore; but were afterwards resumed, and

Sonk, Sonsa, and Sahar.

Goberdhun.

finally annexed to the Company's territories by treaty, dated the 17th April 1806. They were joined to Zillah Agra, and the criminal laws extended to them by Regulation XII, 1806. In the same manner, the pergunnah of Goberdhun, also part of the conquered provinces, was granted to Koor Luchmun Singh, a son of the same Rajah; but was afterwards resumed, and annexed to the district of Agra on the 25th January 1826, by Regulation V. of that year.

Cuttack.

37. On the 17th December 1803, the province of Cuttack, "including Balasore, and the other dependencies of the said province," were ceded to the Company by the Rajah of Berar, Raghojee Bhoonsla; and by Regulation IV. 1804, (passed on the 3rd May) "the regulations for the administration of justice in criminal cases, and for the guidance of magistrates in the provinces of Bengal and Behar, and in the part of the province of Orissa heretofore subject to the dominion of the British Government" were extended thereto. Certain special rules for the administration of the police were passed at the same time, and also in Regulation XIII, 1805; and in the operation of these were included the pergunnahs of Puttespore, Kummardichour, and Bograe, in the Zillah of Midnapore.

Dehra Doon.

Kumaon, &c.

38. The tract of country, called Dehra Doon, was surrendered to the Company by the Rajah of Nepaul on the 15th May 1815; and annexed to the district of Saharunpore by Regulation IV. 1817, passed on the 28th February; by which also it was made subject to the same laws and regulations as the ceded and conquered provinces. But the administration of certain portions of territory, which were ceded by the same treaty, including the province of Kumaon, Jounsar, Bawur, Poondur, and Sundokh, and other small tracts situated between the rivers Jumna and Sutledge, was entrusted to British officers acting under the immediate instructions of the Governor General in Council; and special rules were enacted in Regulation X, 1817 for the administration of justice, and for the appointment by the Governor General in Council of a special commissioner for the trial of persons charged with the commission of heinous offences therein. In 1825 it was declared, that "local circumstances rendered it expedient to transfer the Dehra Doon to the jurisdiction of the commissioner in Kumaon, and also to place under the same authority the pergunnah of Chandnee," which was then attached partly to Moradabad and partly to Saharunpore; and by Regulation XXI, of that year, the provisions of Regulation X, 1817 were declared applicable thereto. By Regulation V, 1829, however, the Dehra Doon was again separated from the jurisdiction of the commissioner in Kumaon, and the provisions of Regulation X, 1817 were declared no longer applicable to it: such parts of the latter regulation also as provided for the appointment of a special commissioner were rescinded: and it was enacted that "the administration of criminal justice in the Dehra Doon, and in the reserved tracts between the Jumna and Sutledge, should thereafter be conducted under such rules and instructions as the Governor General in Council might please to issue for the guidance of the officers to whom it might be entrusted." Finally, by Act X, 1838, the remaining part of Regulation X, 1817 was repealed; and the functionaries of the province of Kumaon were placed under the control and superintendence in criminal cases of the Nizamut Adawlut, who were to exercise it in conformity with the instructions of Government.

39. The pergunnah of Handya was ceded to the Company by the Nawab Wuzeer on the 1st May 1816; and by Regulation XVIII, of that year, passed on the 16th August, it was annexed to the Zillah of Allahabad, and declared subject to the laws and regulations established for the internal administration of that district.

Handya.

40. On the 1st November 1817, the elakah of Khundeh, appertaining to the pergunnah of Mahoba, together with certain villages belonging to the pergunnah of Choorkee, on the right bank of the Jumna, were ceded to the Company by Nana Govind Row, and were in like manner annexed to the district of Bundelcund by Regulation II, 1818, passed on the 31st March.

Khundeh, &c.

41. There remains only to explain the nature of the Mahomedan criminal law, by the principles of which, except in so far as they have been expressly rejected or amended by the regulations of Government, the criminal courts established by the Company are required to regulate their decisions. The elements of this law are taken from the Koran; but there are so few passages therein which are applicable to ordinary cases, that the administrators of the law are obliged to have recourse to numerous commentators, as well as to the soonnut, or rules of conduct, deduced from traditions of the oral precepts, actions, and decisions of the prophet.(b) The two great sects of Mahomedans, the Shya and Soonies, frequently differ both in interpreting the Koran, and in admitting or rejecting the traditions; but the authoritative writings of Abou Huneefah, and his two disciples, Abou Yoosuf and Imam Mahomed, who were Soonies, govern all judicial decisions in India. If a difference of opinion exists between these authorities, judgment is to be given according to the decision in which the master and one of his disciples agree; or if both the disciples dissent from their master, according to that which appears most consonant to reason, or the practice of modern days, or founded on the best authority.* In judicial decrees however the doctrine of Abou Yoosuf is considered more sound than that of his fellow disciple. When no precedent can be found, the Mahomedan judge is directed to abide by the decisions of subsequent lawyers; but if these also fail to afford a direct solution of any legal question, it is deemed not improper to resort to judgment, analogy, and reason.(c) The principles of penal justice comprised in the Mahomedan code are classed under three heads, viz. 1st, Kisas, or retaliation, including diyut or the price of blood; 2nd, Hoodood, or prescribed penalties; 3rd, Tazeer and Seasut, or discretionary correction and punishment. Under the

Mahomedan criminal law.

* In trials for murder *futwas* are given according to the doctrines of Yoosuf and Mahomed Reg. IX. 1793, sect. 50.

(b) From the Atlantic to the Ganges, the Koran is acknowledged as the fundamental code, not only of theology, but of civil and criminal jurisprudence; and the laws, which regulate the actions and the property of mankind, are guarded by the infallible and immutable sanction of the will of God. This religious servitude is attended with some practical disadvantage; the illiterate legislator had been often misled by his own prejudices and those of his country; and the institutions of the Arabian desert may be ill adapted to the wealth and numbers of Ispahan and Constantinople. On these occasions, the Cadi respectfully places on his head the holy volume, and substitutes a dexterous interpretation more apposite to the principles of equity, and the manners and policy of the times.—*Gibbon's Decline and Fall, Chap. 50.*

(c) It would be foreign to the nature of this sketch to notice the various oriental works on jurisprudence, which are esteemed by the lawyers, and which govern judicial decisions in India; but the reader, desirous of obtaining information regarding them, is referred to Harrington's Analysis, to which I am indebted for the whole of this account of Mahomedan law.

first head are included offences against the person (called jinayat) as wounding, homicide, and murder. Under the second are ranged robbery (sarika-i-kobra), theft (sarika-i-soghra), drinking wine (shoorb), adultery (zina), and slander of the same (kuzuf). And the third head comprises all crimes not expressly falling within the laws of Kisas and Hud, as well as such as, though comprehended within the general provisions of those laws, are specially excepted from the operation of them by some doubt, or legal defect (shoobah.) The offences, which fall under the heads of Kisas and Hoodood will be noticed hereafter in their proper places; but the principles of Tazeer and Seasut are of a more general nature, and it is more convenient to note here their general provisions.

Tazeer and Seasut.

42. Tazeer, in its primitive sense means prohibition or restriction, and is legally defined to be an infliction (akoobut), undetermined by law, on account of the right of God, as well as for the rights of individuals; or, in other words, for the ends of public, as well as private justice; and it is declared to be incurred by any offence, whether of word or deed, not subject to a specific legal penalty. Seasut, literally protection, is a word used to express the exemplary punishment, extending even to death which may be considered necessary to protect the community from atrocious and irreclaimable offenders. These terms include both objects proposed to be effected by punishment, correction and discipline; individuals are punished and reformed; others are deterred from committing the like offence, and the well-being of the community is improved.

Discretionary
punishment.

43. In the case of offences against the community, the evidence of the prosecutor is admissible, or the offender may be brought to trial and punishment without any complaint from the party injured; but the judge alone is capable of remitting the punishment incurred. But in the case of offences against individuals, the plaintiff must himself or by deputy conduct the prosecution; and, though incompetent to bear testimony in his own cause, is at liberty to forgive the offence. In cases of the latter description, absent witnesses may appoint persons to give evidence for them; or, in defect of proof, the accused party may be put upon his oath. Tazeer, though allowed as a private right, cannot be inflicted without a judicial sentence; and though, for the full legal conviction of a Mahomedan, the evidence of witnesses of any other religious persuasion is not strictly admissible; nor of women, if the prosecution be of a public nature; yet Tazeer and Seasut may in all cases be inflicted upon strong presumption, whether arising from the credible testimony of men, or women, of whatever religion, or from circumstances which warrant a violent presumption of guilt, as well as upon the confession of the accused. And it is expressly declared that a conviction for Tazeer may be founded upon the depositions of the prosecutor and one credible male witness, in public cases; or in those of a private nature, upon the testimony of two men, or one man and two women. The punishments, which may be awarded upon a conviction for Tazeer, include private and public reprimands, and exposure (tusheer); a temporary sequestration of property, stripes, imprisonment, and even capital punishment, according to the rank and situation of the offender, or the nature of the offence. As regards capital punishment, however, although some authorities have recognized, in abstract terms, the

right of the ruling power to extirpate evil-doers generally, yet it would appear that strictly it can be awarded only in cases of murder.*

* N. A. R. vol. 2,
page 418.

44. The general doctrine of discretionary punishment has been clearly set forth in the preamble to Regulation LIII. 1803; and it will be fit to cite the passage at length. "The Mahomedan law vests in the sovereign and his delegates the power of sentencing criminals to suffer discretionary punishment (under the legal denominations of Tazeer, Acoobut, and Seasut) in three cases. First, in the case of offences for which no specific penalty, of Hud or Kisas, has been provided by the law; being for the most part offences not of a heinous nature, the punishment of which is left discretionary, below the measure of the specific penalties, for the correction and amendment of the offender. Secondly, for crimes within the specific provisions of Hud and Kisas; when the proof of the commission of such crimes may not be such as the law requires for a judgment of the specific penalties, though sufficient to establish a strong presumption of guilt; or although the proof be such as is required for a sentence of Hud or Kisas, when such sentence is barred by a remission of the claim to retaliations in cases of Kisas; or by any of the special exceptions and scrupulous distinctions, which (under the general denomination of shoobah) are considered by the prevalent authorities of Mahomedan law to bar a judgment for the specific penalties of that law. Thirdly, for heinous crimes in a high degree injurious to society; and particularly for repeated offences of this description; which, for the ends of public justice (as expressed by the term Seasut) may appear to require exemplary punishment beyond the prescribed penalties; and with respect to crimes of this description, an unlimited discretion, extending to capital punishment, is admitted to have been left by the Mahomedan law to the sovereign authority of every country in which that law prevails, as well as to its judiciary delegates." Such being one of the leading principles of the law, the administration of it necessarily became arbitrary and uncertain, when committed to inefficient officers. The amount of injury suffered doubtless differs considerably in cases, which fall under the same denomination; and therefore it is impossible accurately to define each particular offence, and to appoint a specific punishment for every crime; but there are few individuals, and rarely to be found, to whom so wide a latitude in meting punishment can be entrusted, as is given by the Mahomedan law; and still smaller must be the number of those, whose minds are able to contract to the pointless intricacies and uncertain provisions of that code, and at the same time to expand to the noble duties of the judge and the great ends of criminal justice. And hence it was observed "in the adjudication of punishments under the discretion thus allowed, that the futwas of the Mahomedan law officers of the criminal courts were often governed by a consideration of the degree of proof against the party accused, rather than the degree of guilt, and criminality of the act, established against him; and the penalties awarded by them, in such cases, were either adjudged on insufficient proof of guilt, or were inadequate to the heinousness of the offence of which the prisoner was convicted." The law was amended in these points by the regulation from which these passages are quoted.

45. In the remaining pages of this work are detailed the provisions of the law now extant. To detail the various alterations and improvements, which experience has gradually

introduced since the first formation of a code of law in 1793, would swell the bulk of this volume to an inconvenient size; and the advantages to the student would not, perhaps, compensate the practical man for the impediments, which such a course would raise to that facility for reference so much to be desiderated.

SECTION II.

OF THE REGULATIONS.

Principles on which
the regulations are
framed.

46. "It is essential," says the preamble to Regulation XLI. 1793, "to the future prosperity of the British territories in India, that all regulations which may be passed affecting in any respects the rights, persons, or property of their subjects, should be formed into a regular code, and printed with translations in the country languages; that the grounds on which each regulation may be enacted, should be prefixed to it; and that the courts of justice should be bound to regulate their decisions by the rules and ordinances which those regulations may contain. A code of regulations framed upon the above principles will enable individuals to render themselves acquainted with the laws upon which the security of the many inestimable privileges and immunities granted to them by the British government depends, and the mode of obtaining speedy redress against every infringement of them; the courts of justice will be able to apply the regulations according to their true intent and import; future administrations will have the means of judging how far regulations have been productive of the desired effect, and, when necessary, to modify or alter them as from experience may be found advisable; new regulations will not be made, nor those which may exist be repealed, without due deliberation; and the causes of the future decline or prosperity of these provinces will always be traceable in the code to their source." In furtherance of these principles certain rules were passed, in accordance with which the regulations of government are framed and translated; it would however be impertinent to give them a place in a work, which regards the administration rather than the enactment of laws.

Courts to be guided
by them alone.

47. The civil and criminal courts of justice are to be guided in their proceedings and decisions by the regulations framed and transmitted to them by government, as directed in this regulation, and by no other. (a) *Beng. Reg. XLI. 1793, sect. 13. Ben. Reg. I. 1795, sect. 4. Ced. Prov. Reg. I. 1803, sect. 13.*

(a) "Penal statutes must be construed strictly." *Blackstone*.—"The judge is not to judge according to his own discretion only; he must strictly adhere to the letter of the law; and no constructive extension can be admitted; and, however criminal an act might in itself be, it would pass unpunished if it were found not to be positively comprehended in some one of the cases provided for by the law. The evil that may arise from the impunity of a crime,—that is an evil, which a new law may instantly stop,—has not by the English laws been considered as of magnitude sufficient to be put in comparison with the danger of breaking through a barrier on which so materially depends the safety of the individual." *De Lolme*.

48. One part of a regulation is to be construed by another, so that the whole may stand. (b) *Beng. Reg. XLI. 1793, sect. 19. Ben. Reg. I. 1795, sect. 4. Ced. Prov. Reg. I. 1803, sect. 19.*

Construction by itself.

49. As regards the question how far the meaning of the words of an enactment is to be construed by the statements of its preamble, there is a long argument in Reports *L. P.* 1852, page 613. It seems to have been decided that, where the words of the enacting portion of the law are precise and unambiguous, it is unnecessary to have recourse to the preamble: and that it is sufficient to expound the words in their natural and ordinary sense. *Sententia absoluta expositore non indiget.*

50. If a regulation is passed differing from a former regulation, either wholly or partially, the new regulation is to be considered as a virtual repeal of the old one, as far as it may differ from the latter, provided that the new regulation be couched in negative terms, or by its matter necessarily imply a negative. *Beng. Reg. XLI. 1793, sect. 20. Ben. Reg. I. 1795, sect. 4. Ced. Prov. Reg. I. 1803, sect. 20.*

New regulation differing from old.

51. If a regulation, that rescinds another regulation, is itself afterwards rescinded, the original regulation is to be considered as revived without any formal declaration to that purpose. *Beng. Reg. XLI. 1793, sect. 21. Ben. Reg. I. 1795, sect. 4. Ced. Prov. Reg. I. 1803, sect. 21.*

Repealed regulation revived.

52. A regulation is to be considered as promulgated from the date of the receipt of the English copy. *C. O. No. 137 of vol. 2.*

Promulgation.

53. The date on which a regulation is received in an office should invariably be recorded thereon, the note being attested by the official signature of the presiding officer. *Const. No. 566.*

54. On receipt of translations of the regulations in the country languages, judges and magistrates are to cause them to be publicly read in their cutcherries; and to require the native pleaders of their respective courts to take copies of the translations of any regulations, which relate, directly or indirectly, to the administration of civil justice. *Ced. Prov. Reg. VIII. 1805, sect. 31. Beng. and Ben. Reg. XI. 1806, sect. 12.*

Translations to be read publicly.

55. No regulation is considered to extend, either wholly or in part, to the province of Benares, unless the title to the regulation, or the regulation itself, or some other regulation, declares the whole or a part of it to extend to that province. *Reg. I. 1795, sect. 4.*

Instance of extent of application.

56. In a case of supervenient insanity after the commission of murder by the prisoner while sane, the court did not think fit to apply the rule contained in *Reg. IV. 1822*, which would have been disadvantageous to the prisoner, as the offence was committed long prior to that enactment. *N. A. R. vol. 2, page 189.*

Examples of construction.

57. The court would not apply the provisions of *Reg. IV. 1822* (unfavorable to the prisoner) to an offence committed subsequently to the date of its being in force, but prior to

the probable date of its receipt at the place where the offence was committed. N. A. R. vol. 2, page 233.

58. Held that the rule contained in section 7, Reg. XII. 1825,—which declared that the inadequacy of a prescribed sentence was not a legitimate ground for referring the case to the higher court, and was so far in favour of a prisoner,—was applicable to the case of a prisoner whose offence was committed prior to the promulgation of that enactment. N. A. R. vol. 3, page 107.

59. An inferior court may decide a case, which by the enactments in force at the time of the apprehension of the prisoner is within its competency, although, under the laws existing at the time of the commission of the offence, it must have referred the case to a superior court,—provided the new enactment does not enhance the punishment. Const. Nos. 594 and 298. N. A. R. vol. 3, page 107.

Sentences to be regulated by Mahomedan law.

60. The sentences of the courts are to be regulated by the Mahomedan law, excepting in cases in which a deviation from it is expressly directed by any regulation. *Beng. Reg. IX. 1793, sect. 54 and 74. Ced. Prov. Reg. VII. 1803, sect. 23: and Reg. VIII. 1803, sect. 9.*

Unless any one not a Mahomedan claims exception.

61. But any person, not professing the Mahomedan faith, when brought to trial on commitment for an offence cognizable under the general regulations, may claim to be exempted from trial under the provisions of the Mahomedan criminal code. In such case the prisoner is to be tried with the assistance of a punchayet, assessors, or a jury, and the futwa of the law-officer is to be dispensed with. Reg. VI. 1832. sect. 5.*

* r. *Infra*, Section of sessions.

Mahomedan law superseded by regulations.

62. In cases where a stated penalty is prescribed for an offence, as well by the regulations as by the Mahomedan law, the provisions of the latter are superseded. N. A. R. vol. 1, page 262.

Public officers are to propose new regulations for enactment, as occasion prompts, or circumstances require.

63. If in any case not provided for by the regulations, the Mahomedan law appears repugnant to justice, the court is notwithstanding to adhere thereto, if in favor of the prisoner, in the case before them; or, if against the prisoner, to mitigate the punishment or recommend a pardon; and at the same time to propose a new regulation to provide against a recurrence of the case. *Beng. and Ben. Reg. IV. 1797, sect. 4. Ced. Prov. Reg. VIII. 1803, sect. 11.*

64. The Court is to propose a regulation to fix and declare the specific punishment of any crime of magnitude, which may be found not to have been specifically provided for, either by the Mahomedan law or by the regulations, and which may appear to call for an express denunciation of the penalty to be incurred by committing the same. Reg. LIII 1803, sect. 7, cl. 3.

65. Magistrates, session judges, and judges of the Nizamut Adawlut are respectively empowered to propose regulations regarding any matters coming within their cognizance. They are to be drafted in the form and agreeably to the rules prescribed in Reg. XLI. 1793, and submitted through the intervening courts, with their remarks thereon, to the Governor General in Council, who is to reject, or adopt them, or to pass such other regulation as may appear to him proper. *Beng. Reg. XX. 1793. Ben. Reg. XXIX. 1795. Ced. Prov. Reg. IX. 1803.*

67. It is the wish of Government, that, whenever European officers perceive any thing in the general system of laws, or in their practical application, calculated to injure the public interests, they should not be restrained from bringing the subject forward merely by the consideration that the case does not fall within the scope of their immediate functions. C. O. S. D. A. April 22, 1825.

68. Whenever public officers desire to offer representations regarding legislative projects published in the gazette, they are to submit them to government. Whenever the government may specially require opinions on any legislative project from particular officers, it will call upon such officers by letter in each case. C. O. Govt. Beng. No. 11, Sept. 25, 1854.

Opinions on projects of law before Council.

69. Acts of Parliament expressly relating to India, are binding upon magistrates of the Company's criminal courts, although no Act of the local legislature has been passed for their promulgation. C. O. No. 50 of vol. 4.

Acts of Parliament binding on magistrates.

CHAPTER II.

OF THE NATURE OF CRIMES, OF PERSONS CAPABLE OF COMMITTING CRIMES, AND OF PRINCIPALS AND ACCESSARIES.

70. It is the custom to preface works on criminal law with remarks on the nature of crimes,—on persons capable of committing crimes,—and on principals and accessaries. I desire to follow this example; but on these subjects neither the Mahomedan law, nor the regulations, contain any full and precise rules; and I have therefore deemed it best, in treating thereof, to supply first the principles of English law as laid down by Blackstone, Russell, &c., secondly the corresponding definitions of Mahomedan law given in the Hedaya, and lastly what is to be found in the regulations. It is not indeed easy to distinguish the principles on which the rules of Mahomedan law have been founded, or to reconcile the differences which occur therein. The cause is evident; the law-giver adapted each ordinance to the peculiar case, which called for its enunciation; and the law-administrators habitually deduced general precepts from a casual decision or dictum of the prophet or other acknowledged authority; comprehensive laws, regarding the species and genera of crimes, would ill grow from individual circumstances; and commentators and magistrates have found ample exercise for their ingenuity and sophistry in applying the isolated passages of the koran, and in resolving opponent doctrines into rules of general application. From this disregard of generic distinctions ensues a defect in classification; and without accurate classification definitions can never be framed.

SECTION I.

OF THE NATURE OF CRIMES.

English**Law.**General defini-
tion.

71. The general definition of a crime is "an act committed or omitted in violation of a public law, either forbidding or commanding it." In the language of the English law offences are, with few exceptions, divided into two classes, felonies and misdemeanors. *Felony* is defined to be an offence which occasions a total forfeiture of either lands or goods, or both, at the common law; and to which capital or other punishment *may be* superadded according to the degree of guilt. The word *misdemeanor*, in its usual acceptation, is applied to all those crimes and offences, for which the law has not provided a particular name; and they may be punished according to the degree of the offence by fine or imprisonment, or both. A misdemeanor is in truth any crime less than a felony; and the term comprehends all indictable offences, which do not amount to felony; as perjury, battery, libels, conspiracies, and public nuisances. So long as an act rests in bare intention it is not punishable; but immediately when an act is done, the law judges not only of the act done, but of the intent with which it is done; and if accompanied with an unlawful and malicious intent, though the act itself would otherwise have been innocent, the intent being criminal, the act becomes criminal and punishable. Thus an attempt to commit a felony is, in many cases, a misdemeanor; and an attempt to commit even a misdemeanor has been decided in many cases to be itself a misdemeanor. And the mere soliciting another to commit a felony is a sufficient act or attempt to constitute the misdemeanor. All that is necessary is an act charged, and a criminal intention joined to that act.

Misprision of
felony.

72. Misprision of felony is taken for a concealment of felony, or a procuring the concealment thereof; and silently to observe the commission of a felony, without using any endeavours to apprehend the offender, is a misprision, a man being bound to discover the crime of another to a magistrate with all possible expedition. If this offence were accompanied with some degree of maintenance given to the felon, the party committing it might be liable as an accessory after the fact.

Distinction be-
tween public and
private wrongs.

73. The distinction of public wrongs from private, of crimes and misdemeanors from civil injuries, seems principally to consist in this: that private wrongs, or civil injuries, are an infringement or privation of the civil rights which belong to individuals, considered merely as individuals; public wrongs, or crimes and misdemeanors, are a breach and violation of the public rights and duties, due to the whole community, considered as a community, in its social aggregate capacity. As if I detain a field from another man, to which the law has given him a right, this is a civil injury, and not a crime; for here only the right of an individual is concerned, and it is immaterial to the public which of us is in possession of the land; but treason, murder, and robbery, are properly ranked among crimes; since, beside the injury done to individuals, they strike at the very being of society, which cannot possibly subsist, where actions of this sort are suffered to escape with impunity.

74. The same principles are in a great measure acknowledged by Mahomedan law. Mr. Mill observes, that “in the selection of the acts, which shall be accounted offences, there is great uniformity all over the globe”; but it seems that the Mahomedan code loses sight of the distinctions usually drawn between civil and criminal law, and embraces a range somewhat wider than the English. It considers offences as divided into two classes, those against the law of God, and those against individuals; and declares that the punishment of the former is due to the right of God, of the latter to the right of the individual; that the one cannot be remitted by the act of any individual; while the other may be absolved by the person injured. Indeed in all cases it seems that the conviction and punishment of the offender have at least a negative dependance on the prosecutor; as, for instance, in a case of theft, which is an offence against the right of God, the thief cannot be punished even on his own confession unless the person robbed comes forward to prosecute. But it necessarily follows that the end and purpose of criminal law are forgotten, if a breach and violation of the public rights and duties, due to the whole community, may be forgiven by the individual on whom the injury more immediately falls, or if he alone is permitted to compound the offence which has outraged society in its aggregate capacity. The object of civil law ought to be to restore to a party injured his right if possible, or to give him an equivalent; the object of criminal law should be the prevention and punishment of public wrongs. Again, the Mahomedan law, in assuming to itself the vindication of the rights of God, observes offences, of which an English judge cannot take notice; for every crime does not include an injury, since there are violations of the divine law, which are neither injurious to the public morals, nor prejudicial to an individual.

**Mahomedan
Law.**

General principle.

75. We have already adverted to the three principles of Mahomedan penal justice, viz. retaliation, stated penalties, and discretionary punishment. Under the two first of these heads certain offences are in a measure defined, and declared liable to certain penalties; but under the last, the nature and classification of the act impugned, as well as the measure of punishment proportionate thereto, are left to the discretion of the judge. He must decide according to his sense of justice, equity; and good conscience. The British Government, while instituting courts for the administration of this code, and making “provisions for determining the punishment to be adjudged by those courts in all cases wherein a discretion is left by the Mahomedan law,” has thought proper to place them under but little further general restrictions: in some few cases offences have been defined and penalties prescribed. By clause 7, sect. 2, Reg. LIII. 1803, it is enacted, that—“if the crime of which a prisoner is convicted, and for which he is declared liable to discretionary punishment, shall neither have been specifically provided for by any regulation, nor by any stated penalty in the Mahomedan law; and the judge, before whom the trial may be held, considers the crime to have been established against the prisoner, and deserving of punishment,” he may adjudge punishment within certain limits. So also the jurisdiction of the magistrate is confined, by sect. 19, Reg. IX. 1807, only to those “criminal offences punishable under the Mahomedan law and the Regulations;” and he is to adjudge punishment within certain limits; or, if he considers such penalty insufficient for the criminality of the offence, he is to commit the offenders to the sessions.

**Regulation
Law.**

Session Judge.

Magistrate.

If act forbidden
without sanction.

76. It would seem that any act forbidden by the regulations, but for which no punishment is specified, is considered as a misdemeanor, and punishable accordingly at discretion under the general regulations.(a) Const. No. 1305.

What is a punish-
able offence.

77. But the sessions court, unassisted by a Mahomedan law-officer, is incompetent to declare that to be a crime which is not so declared by the regulations. The law professedly administered is the Mahomedan law, amended and modified by the regulations. When the amendments are applicable, there can be no difficulty in disposing of trials; but, in the contrary event, an exposition of the Mahomedan law is necessary to pronounce whether the act of the prisoner is punishable or otherwise. C. O. No. 55 of vol. 3.

SECTION II.

OF PERSONS CAPABLE OF COMMITTING CRIMES.

English Law.

General principle
dependant on want
or defect of will.

78. All the pleas and excuses, which protect the committer of a forbidden act from the punishment which is otherwise annexed thereto, must be founded on the want or defect of will; for without the consent of the will human actions cannot be considered as culpable. To make a complete crime cognizable by human laws, there must be both a will and an act. An overt act, or some open evidence of an intended crime, is necessary in order to demonstrate the depravity of the will, before the man is liable to punishment: and as a vicious will without a vicious act is no civil crime, so on the other hand an unwarrantable act without a vicious will is no crime at all. So that to constitute a crime against human laws, there must be, first, a vicious will; and secondly, an unlawful act consequent upon such vicious will. The cases of want or defect of will seem to be reducible to four heads: 1st, infancy; 2nd, *non compos mentis*; 3rd, subjection to the power of others; 4th, ignorance, chance, and the like.

Infancy.

79. Infants, under the age of discretion, ought not to be punished by any criminal prosecution whatever. But this age of discretion must be regulated as well by the nature of each individual case, as by the strength of the delinquent's understanding and the degree of cunning shown in the perpetration of the offence charged. For one lad of eleven years old may have as much cunning as another of fourteen; and in such cases the maxim is that *malitia supplet aetatem*. Under seven years of age an infant cannot be guilty of felony, for then a felonious discretion is almost an impossibility in nature. On the attainment of fourteen years the criminal actions of infants are subject to the same modes of construction as those of the rest of society;—but between fourteen years and seven, though an infant is *primæ facie doli incapax*, and presumed to be unacquainted with guilt, yet this presumption will diminish with the advance of the offender's years, and will depend upon the particular facts

(a) With regard to an act enjoined, this principle was not admitted by all the judges sitting in the case of the zumeendar, who refused to appoint a chokeedar. But two out of three held that where there is a legal obligation, the observance of it may be enforced under the general powers with which judges and magistrates are invested.

and circumstances of his case. The evidence of malice, however, which is to supply age, should be strong and clear beyond all doubt and contradiction; but if it appear that the offender is *doli capax* and can discern between good and evil, he may be convicted and suffer death.

80. It has been considered that there are four kinds of persons who may be said to be non compos. 1st, an idiot; 2nd, a lunatic; 3rd, one made non compos by sickness; 4th, one that is drunk. The difference between the two former lies in this, that an idiot is one who has been a fool or mad from his birth, and never has lucid intervals; while a lunatic has occasional intervals of reason. One who is deaf and dumb from birth is in presumption of law an idiot, and the rather because he has no possibility to understand what is forbidden by law to be done, or under what penalties; but if it appear that he has the use of understanding, as some of that condition discover by signs, then he may be tried and suffer judgment. Persons made non compos mentis by sickness, and lunatics, are excused in criminal cases from such acts as are committed while under the influence of the disorder. With respect to drunkenness, if it be voluntary, it cannot excuse a man from the commission of any crime, but on the contrary must be considered as an aggravation of whatever he does amiss;—yet if a person by the unskilfulness of his physician, or the contrivance of his enemies, eat or drink such a thing as causes phrenzy, he is excused;—and also if the phrenzy has become habitual and fixed, though contracted by the vice, and will of the party, yet it puts the man in the same condition as if it were contracted at first involuntarily. In some cases, however, the state of the culprit may be taken into consideration, where premeditation is the principal point to be decided. Generally it seems that though, if there be a total permanent want of reason, or if there be a total temporary want of it, when the offence was committed, the prisoner will be entitled to an acquittal; yet if there be a partial degree of reason, and a competent use of it sufficient to have restrained those passions which produced the crime; if there be thought and design, a faculty to distinguish the nature of actions, to discern the difference between moral good and evil; then, upon the fact of the offence proved, the judgment of the law must take place.

Non compos
mentis.

Idiot.

Lunatic.

One deaf and
dumb from birth.

Non compos from
sickness.

Drunkenness.

General principle.

81. If a man in his sound memory commits a capital offence, and before arraignment for it he becomes mad, he ought not to be arraigned for it; because he is not able to plead to it with that advice and caution that he ought. And if, after he has pleaded, the prisoner becomes mad, he shall not be tried; as he cannot make his defence. If, after he be tried and found guilty, he loses his senses before judgment, judgment shall not be pronounced: and if after judgment he becomes of non-sane memory, execution shall be stayed; for peradventure, says the humanity of the English law, had he been of sound memory, he might have alleged something in stay of judgment or execution.

Proceedings as
to trial and judgment.

82. Persons are excused from those acts which are not done of their own free will, but in subjection to the power of others, and through unavoidable force and compulsion. Though a law is contrary to religion and sound morality, yet obedience to it is sufficient extenuation of civil guilt before the municipal tribunal. In private relations, the principal case, where constraint of a superior is allowed as an excuse for criminal misconduct, is with regard to the matrimonial subjection of the wife to her husband; for neither a child nor a

Subjection to the
power of others, and
compulsion.

Civil power.

Husband and
wife.

servant are excused the commission of any crime, whether capital or not capital, by the command or coercion of the parent or master. A wife shall not suffer punishment for committing theft or burglary, or other civil offences against the laws of society, by the coercion of her husband, or in his company, which the law construes a coercion. But she is punishable, if upon the evidence it appears that she was not under coercion, or acted voluntarily. So also she is guilty of all crimes which, like murder, are *mala in se*, and prohibited by the law of nature. But where the wife is to be considered merely as the servant of the husband, she will not be answerable for his breach of duty, however fatal, though she may be privy to his conduct. In all misdemeanors, and when the wife offends alone, she is responsible for her offence.

Fear of death,
or bodily harm.

83. Threats and menaces, which induce a fear of death or other bodily harm, take away the guilt of many crimes and offences; but then such fear must be just and well-grounded; and the excuse is not admitted in natural offences so declared by the law of God. If a man be violently assaulted, and has no other means of escaping death but by killing an innocent person, such fear and force does not acquit him of murder, for he ought rather to die himself than escape by the murder of an innocent person; but in such a case he may kill the assailant.

Choice between
two evils.

84. Another species of necessity is where a person is compelled to choose between two evils, and chooses the least pernicious of the two. As where a civil officer wounds or kills persons resisting his authority, and preventing him from executing duties which he is bound to perform.

Ignorance or
mistake.

85. The plea or excuse of ignorance applies only to ignorance or mistake of fact, and not to any error in point of law. For ignorance of the municipal law of the kingdom is not allowed to excuse any one that is of the age of discretion, and compos mentis, from its penalties when broken; on the ground that every such person is bound to know the law, and presumed to have that knowledge.(a) If a man, intending to kill a thief or house-breaker in his own house, by mistake kills one of his own family, this is not a criminal action; for here the deed and the will acting separately, there is not that conjunction between them which is necessary to form a criminal act.

Chance or mis-
fortune.

86. If a man commits an unlawful act by misfortune or chance, and not by design, there is a deficiency of will, which exempts from criminality; for here the will does not co-operate with the deed. But he is not excused, if the accidental mischief ensues in the performance of an unlawful act; though even in the latter case the law makes a distinction between an unlawful act, which is in its original nature wrong and mischievous, *malum in se*, and one which is merely *malum prohibitum*; as where any unfortunate accident happens from an unqualified person being in pursuit of game, he is amenable only to the same extent as a man duly qualified.

Mohomedan
Law.
General term.

87. The term, *mokulluf*, includes all persons accountable to the law for their actions; and refers particularly to the sane and adult, who alone are subject to the penalties of hudd and kisas.

(a) Ignorantia juris, quod quisque tenetur scire, neminem excusat.

88. It is not always held necessary by the Mahomedan law, that a vicious will and a vicious act should combine in order to make an offence complete; for a person may be the active, though remote, cause of an injury, either unintentionally and by mere accident; or by carelessness, obstinacy, or wilful neglect; or he may occasion an injury passively by an intermediate cause. Here the will may act separately from the deed, or it may sit neuter, neither concurring with the act, nor disagreeing to it; but the offender is held responsible in his property, because it is deemed just that the person injured should receive compensation, and that the loss should fall on the cause of the injury rather than on any other person. It is however allowed that, if the injury is occasioned by an intermediate cause, the offender is liable to make compensation only when he transgressed in the original action.(a) A want or defect of will however is always considered so far as to mitigate the nature and degree of punishment. In offences against the person it is said, that “an offence is rendered complete by the intention;(b) and complete punishment (understood by retaliation) is incurred where that exists, but otherwise not;”—as where a person killed a man believing him to be a jackal, it was held that the offence was of less magnitude than wilful bloodshed, but was “not altogether exempt from criminality.”(c) The pleas, then, for exemption from punishment are confined, first to cases in which there is a defect of understanding, including infancy and non compos mentis;(d) and secondly, to those in which the action is constrained by some outward force and violence, *i. e.* subjection to the power of others.(e)

Chance or ignorance.

General rule.

(a) The following curious application of this principal is given in the Hedaya, vol. 4, page 359: “If a water spout, set out from a house over the public road, fall upon any person and kill him, an examination must be made to discover which part of the spout it was that hit the person; and if it appear that he was struck by the end next the house from which it had projected, no atonement is due from the person who set it up, because with respect to that part he is not a transgressor, since he had placed *that* in his own property; but if it appear that the deceased was struck by the projecting end, the person who set it up is responsible, because with respect to that part he is a transgressor, as having caused the spout to project over the road without any necessity, since he might to as good purpose have fixed it up so as not to project over the road at all. If, on the other hand, it appears that the deceased was struck by both ends of the spout, the fixer up is responsible for an half of the fine, and the other half drops. If it cannot be discovered which part of the spout struck the deceased, in this case also an half of the fine is due; for the accident may have happened in either of *two* ways, in one of which the complete fine is due, and in the other nothing whatever, and therefore, in contemplation of *both* circumstances, an *half* is imposed.”

(b) The apparent intention is correctly taken into consideration by the Mahomedan lawyers; but their fallacious subtleties have adulterated this as others of their wisest provisions; for in offences against the person it is held that, “as the intention is a thing concealed which we cannot discover but by inference from something affording an argument of it, and as the use of the instrument of homicide affords an argument of it, so the intention may be concluded from the instrument used”; (Hed. Trans. vol. 4, page 271)—whence it follows that the wilful murderer and the unlucky person who commits accidental homicide meet the same punishment. It will be remembered that the British government early introduced an amendment of this provision.

(c) See also the Section in another place on accidental homicide.

(d) Slavery forms a plea for exemption on the same terms as infancy and lunacy, but it is not thought necessary to refer to it here.

(e) There are many cases in which an offender is exempted from the stated punishment of hudd; but in such cases he becomes liable to discretionary punishment; for as Mr. Harington observes, “the fixed penalty is so frequently severe and against the feelings of humanity, that numerous provisions have been made by the legislator for dispensing with or rather evading the law by qualifications, restrictions, and conditions, some one of which so often intervenes as to render the actual infliction of such severe punishment very rare.”

Infants and lunatics are exempt from hudd and kisas; but are liable to other penalties for acts, though not for words.

89. But even in regard to infancy and insanity this exemption saves only from hudd and kisas, i. e. fixed punishment, and retaliation. "The disqualifications in question occasion inhibition with respect to speech, but not with respect to actions; because acts, upon proceeding from the actor, are existent and perceptible, whereas mere words, such as purchase, sale, and so forth, are accounted existent only where they are of lawful force and authority, which depends upon the design of them, a thing which, in the case of infants and lunatics, is not regarded, because of their want of understanding: but if the actions are of such a nature as to induce an effect liable to prevention from the existence of a doubt, such as fixed punishment or retaliation, then infancy and lunacy occasion inhibition; whence it is that infants and lunatics are not liable to fixed punishment or retaliation, since no regard is paid to their design."(a)

One infant instigating another to the commission of an offence.

90. "If an infant instigate another infant to kill a man, and the infant so instigated kills the man accordingly, the fine for the man's blood is due from the infant's *akilas* (i. e. responsible relations); because he has actually killed the man, and the malice or error of an infant is one and the same,—that is, a fine is incurred equally in either instance. Nothing whatever is incurred by the infant who instigated the commission of the act, as he is not liable to be taken to account for his words, nothing being cognizable except what is noticed in the law, which pays no regard to the words of such persons. The *akilas*, moreover, having paid the fine, are not at liberty to reimburse themselves from the infant, either at present, or after he shall have attained maturity; for his words were uncognizable on account of a defect in his natural competency."(b)

Responsibility if they destroy property.

91. "If a lunatic or an infant destroy anything, they are liable to make a recompense, in order that the right of the owner may be preserved. The ground of this is that destruction occasions responsibility, independent of the intention or design;—as where, for instance, a man's property is destroyed, from being fallen upon by a person walking in his sleep, or from the falling of an inclined wall, after due warning; in which cases the sleeper or owner of the wall are responsible, although they did not design the destruction."(c) In the case of *zakat* (i. e. alms) which is not incumbent on infants or maniacs, the law distinguishes those who have lucid intervals.(d)

Wilful murder by irresponsible persons.

92. "Wilful murder committed by an infant, lunatic, or a person occasionally insane (*matovu*), is accounted the same as homicide by misadventure, and the fine is due from the *akilas*. *Shafei*, however, says that "wilful murder by those persons comes under the construction of wilful, insomuch that the fine for it is due from the property of the perpetrator, because the act was undoubtedly wilful, as that term applies to any thing done by intention and with design; and retaliation is remitted in this instance solely because persons of the above description are not liable to any corporal infliction; which argument, however, does not apply to their property, whence it is that expiation is required of them." But this opinion of *Shafei* is denied because "will depends upon knowledge, and knowledge depends upon reason, which in a lunatic is altogether wanting, and in an infant is defective. Neither are they

(a) Hedaya Trans. vol. 3, page 470.

(b) Ibid, vol. 4, page 400.

(c) Ibid, vol. 1, page 4.

(d) Ibid, vol. 3, page 471.

required to make expiation, because that is performed to cover a crime; and in the present instance there is no crime to be covered, as they are held incapable of committing a crime.”(a) The law-officers of the Nizamut hold the latter opinion, and say that in cases of homicide, maiming, and wounding, suspicion of temporary derangement is sufficient to bar kisas and diyut, but does not preclude the imprisonment of the offender to prevent danger to society.(b)

93. “If a murderer, sentenced to suffer kisas, become insane before he has been delivered over by the kazee to the heir of the slain, he is not to be put to death; and his property is answerable for the fine of blood. If he become insane after he has been condemned, and delivered over by the kazee to the heir of the slain, the latter is at liberty to put him to death, notwithstanding his insanity.”(c)

Supervient insanity.

94. A person under age is held in law to be incapable of any act by which he may injure himself; and the same rule applies to lunatics. And it is said in reference to this (in treating of apostacy) that “a person intoxicated with liquor so as to be deprived of his reason is accounted the same as a lunatic.”(d) But the reason of this is explained elsewhere, as regards apostacy, to be that a person’s belief cannot be ascertained during drunkenness.—A man is not to be condemned on his confession, made during intoxication, of a crime the punishment of which is purely a right of God; but he is liable to punishment, if he so confesses to an offence the penalty of which is also a right of the individual, “because a state of drunkenness is here the same as a state of sobriety for the sake of inflicting a penalty.”(e)—But the Mahomedan law does not admit drunkenness to be pleaded as an excuse for crimes committed under its influence;(f) indeed intoxication is itself an offence liable to corporal punishment by hudd.

Such persons cannot injure themselves.
Intoxication.

95. “A person becomes adult on attaining puberty, which is established by the ability of the organs of generation to perform their natural functions, which are then first acquired; or on the completion of his eighteenth year if a boy, or her seventeenth year if a girl.(g) This is the opinion of Hancefah; but the two disciples maintain that upon either a boy or a girl completing the fifteenth year they are to be declared adult. Others say that nineteen years are required in the case of a boy. The earliest period of puberty with respect to a boy is twelve years, and with respect to a girl nine years. When a boy or girl approaches the age of puberty, and they declare themselves adult, their declaration must be credited, and they become subject to all the rules affecting adults; because the attainment of puberty is a matter, which can only be ascertained by their testimony; and consequently, when they notify it, their notification must be credited.”(h)

The period of attaining majority.

96. The Mahomedan law also lays a civil inhibition on persons who have shown any species of mental depravity, not occasioned by a defect of understanding, as the practice of extravagance; and on an insolvent debtor;—but these form no exemptions in matters within the province of criminal law.

Weakness of mind.

(a) Hed. Trans. vol. 4, page 351.

(d) Hed. Trans. vol. 3, page 246.

(b) N. A. R. vol. 1, page 357.

(e) Ibid. vol. 2, page 57.

(c) Harington’s analysis, vol. 1, page 264.

(f) N. A. R. vol. 1, page 247, and vol. 3 page 6.

(g) The law officers appear to look solely to the age of the person without regard to his physical qualifications. See especially N. A. R. vol. 3, page 87.

(h) Hed. Trans. vol. 3, page 482.

Compulsion.

97. "Compulsion applies to a case where the compeller has it in his power to execute what he threatens. The reason of this is, that compulsion implies an act which men exercise upon others, and in consequence of which the will of the other is set at nought, at the same time that his power of action still remains. Now this characteristic does not exist unless the person compelled be put in fear, and apprehend that if he do not perform what the compeller desires, the threatened evil will fall upon him ; and this fear and apprehension cannot take place unless the compeller be possessed of power to carry his menace into execution ; and unless it appear most probable to the person compelled that the compeller will execute what he has threatened, so as to force and constrain him to the performance of the act which the compeller requires of him. Compulsion, however, is not established by a single blow, or a single day's imprisonment, unless the compelled be a person of rank, to whom such a degree of beating or confinement would appear detrimental or disgraceful ; for with respect to such a person compulsion is established by this degree of violence, as by it his volition is destroyed."(a)

Destruction of property by compulsion.

98. "If one person compel another to destroy the property of a third person, it is lawful for the person so compelled to destroy that property ; because the property of another is made lawful to us in all cases of necessity, such as in a situation of famine(b) for instance.

Murder by compulsion.

In such case compensation will be due from the compeller.—If one person compel another, by menacing him with death, to murder a third person, still it is not lawful for the person so menaced to commit the murder ; but he must rather refuse, even unto death.* The retaliation, however, is upon the compeller, if the murder be wilful."(c) This latter point is stated according to the opinion of Haneefah and Imam Mahomed, who consider the compelled person as the instrument rather than the author of the homicide, yet subject to discretionary punishment, if the circumstances of the case appear to require it. But others among the lawyers disagree, and contend that both parties are liable to the penalty of murder. Mr. Harington says, "the principle of justification established by Aboo Haneefah and Imam Mahomed is applicable, *a fortiori*, to every case of physical compulsion, and necessity, in which the homicide may be altogether involuntary on the part of the person, who is forcibly made the instrument of committing it. But no illegal act can be justified under the Mahomedan law by the mere command, or influence, unaccompanied with force or menaces, of a parent, husband, or master, or of any other person whatever."(d)—"If a person upon compulsion commit *zina*, he is liable to punishment, according to Haneefah ; but the two disciples maintain the contrary."(e)

* But see opinion of law-officers in para. 140.

(a) Hed. Trans. vol. 3, page 452.—A person may lawfully eat or drink a prohibited article upon a compulsion which threatens life or limb ; and therefore, if he persist in refusing to eat or drink such article until he lose his life or limb, he is an offender, because he is then an accessory to his own destruction, in the same manner as if he were to refrain from eating carrion when dying with hunger. Hed. Trans. vol. 3, page 459.

(b) It was for some time disputed among European lawyers, whether a man in extreme want of food or clothing might justify stealing either to relieve his present necessities ; but the law of England admits now of no such excuse. Blackstone, book 4, chap. 2.

(c) Hed. Trans. vol. 3, page 461.

(d) Harington's analysis vol. 1, page 249.

(e) Hed. Trans. vol. 3, page 465.

99. When a person, brought before a magistrate in a state of alleged insanity, is charged with having committed a criminal act of a serious nature, such as, supposing him not to be insane, would render him upon conviction liable to punishment, the magistrate is in the first instance to make a full enquiry to ascertain the fact of his real insanity; and should cause him to be occasionally examined by the surgeon, in such way as to enable him to form an opinion of the state of the prisoner's mind.—If it be proved to his satisfaction that the prisoner is really insane, he is to close his proceedings with a statement of his opinion to that effect, and to submit them to the session judge; and he should have a sufficient number of witnesses present besides the surgeon, who may be able to depose to the prisoner's previous state of mind.—If the insanity be not established, he is to proceed as in other cases of criminal charges. C. O. Nos. 307, para. 3, and 137 of vol. 1.

**Regulation
Law.**

Proceedings on the trial of an insane person.
Duty of magistrate.

100. The session judge, after inspecting the proceedings, seeing the prisoner, and examining the surgeon on oath as to the grounds of his opinion, is to pass such orders as may appear proper; and, if satisfied of the actual insanity, is to instruct the magistrate to keep him in further custody, or to send him to the insane hospital of the division, until his sanity be restored. On being pronounced sane, he should be again brought before the magistrate, by whom the charge against him may be properly cognizable, that he may be regularly put upon his trial, and the proceedings on the charge against him be completed before the proper tribunal. C. O. Nos. 307, para. 4, and 137 of vol. 1; and Const. No. 822.

Duty of judge

101. A similar course of proceeding would be proper, in the event of the prisoner having been committed by the magistrate for trial before the sessions, and found insane by that court at the time of trying the commitment; in which case the trial must necessarily be postponed, until the prisoner recover. C. O. No. 307 of vol. 1, para. 5.

If prisoner is found insane on trial before the sessions.

102. In the same manner, in the case of a prisoner standing mute, the magistrate is to cause him to be occasionally examined by the surgeon in such a way as to enable him to form an opinion, whether he is mute from obstinacy, from any real impediment of speech, or from an affection of the mind. And if the prisoner is committed to the sessions, he is to have witnesses in attendance besides the surgeon to depose as to the previous existence or otherwise of the dumbness.—If the prisoner's entire disability to hear or speak be well established, enquiry should be made among the relations and friends of the prisoner, whether any one has been in the habit of communicating with him by signs and tokens; and such person may be employed as an interpreter between the prisoner and the court, if previously sworn to interpret truly. But if it is impracticable by any means to convey intelligence to him, it is incumbent on the judge to enquire for, and take, all the evidence which the circumstances of the case may indicate for the prisoner's defence; and carefully ascertain and record every point which may make in his favor.—If the prisoner appear to be dumb, but not deaf, and apparently in a sane state of mind, the judge will be generally able from the signs and tokens of the prisoner, in answer to questions put to him, to complete the trial in a regular and satisfactory manner. C. O. No. 137 of vol. 1.

Proceedings in the case of a person remaining mute, as if deaf and dumb.

Dumb, but not deaf.

103. In the case of a prisoner standing mute, it is not sufficient that the deposition of the surgeon be taken as to his sanity, or otherwise; but he should be examined specifically as to the cause of his standing mute. N. A. R. vol. 2, page 416.

Commitment.

104. A prisoner was committed on the charge of "murder while in a state of insanity." The wording of this was held to be erroneous and absurd, taken as a criminal charge, the magistrate not being competent to determine the question of sanity or otherwise. N. A. R. vol. 3, page 60.

Accused persons are not to be acquitted for unsoundness of mind, unless it is shown that they were incapable of knowing at the time of doing the act, that

by law.

105. No person, who does an act which, if done by a person of sound mind, is an offence, is to be acquitted of such offence for unsoundness of mind, unless the court or jury, as the case may be, in which, according to the constitution of the court, the power of conviction or acquittal is vested, finds that, by reason of unsoundness of mind, not wilfully caused by himself, he was unconscious, and incapable of knowing, at the time of doing the said act, that he was doing an act forbidden by the law of the land. (a) Act IV. 1849, sect. 1.

(a) The following observations taken from a late work, may be accepted as a commentary upon this definition. "It is agreed by all jurists and is established by the law of this and every other country, that it is the reason of man which makes him accountable for his actions, and that the deprivation of reason acquits him of crime. Neither in civil, nor in criminal cases, however, will our law, provided a man be *compos mentis*, measure the degree of his capacity. A weak man, albeit much below the ordinary standard of human intellect, is bound by his contracts, may exercise dominion over his property, and is responsible for his crimes. From such responsibility he alone is emancipated who is, in the language of our law *non compos mentis*. The main inquiry before us, accordingly, is this;—what may, in connection with criminal law, be the meaning and significance of the phrase just used? what is that kind or species of insanity which exempts from punishment on the ground that its existence is inconsistent with a criminal intent? Clearly it is not every degree of insanity which suffices for this purpose. Many men of general ability are upon some one topic insane, provided their opinions be tested by those entertained by the world at large. One labouring under the grossest delusions may for many purposes be treated, and held accountable, as if sane, ex. gr. he may, possibly, be admitted to give evidence on a criminal trial in a court of law; and where such an objection is taken to the competency of a witness, it is for the judge to say whether the insane person has the sense of religion in his mind, and whether he understands the nature and sanction of an oath; and then the jury will have to decide on the credibility of, and weight due to, his evidence. It is clear, then, that a man may be *non compos mentis quoad hoc*, and yet not *non compos mentis* altogether. In *McNaghten's case*, the accused was charged with murder, and, the fact of wilful homicide being established, the defence of insanity was set up, supported by evidence that the accused was affected by morbid delusions which carried him beyond the power of his own control as regarded acts connected therewith, and left him no moral perception of right and wrong. It was further shewn to be the nature of the disease under which the prisoner suffered, gradually to acquire intensity, and then suddenly to develop itself with great violence; the prisoner was acquitted on the ground of insanity. In consequence of this verdict, which led to some discussion in the House of Lords, certain questions were by that House proposed to the judges, from the answers to which, given by the majority of the bench, must be deduced the degree of criminal responsibility attaching to one affected with mental disease; it becomes necessary, therefore, in this place to set out the substance of the questions, on the occasion alluded to, thus formally proposed, and of the answers advisedly returned thereto. The first question submitted to the judges in *McNaghten's case* was as follows;—"What is the law respecting alleged crimes, committed by persons afflicted with insane delusion in respect of one or more particular subjects or persons; as, for instance, where, at the time of the commission of the alleged crime, the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some supposed public benefit?" To this question, the answer given was, that a person labouring under such partial delusion only, and not being in other respects insane, although he did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, is nevertheless punishable according to the nature of the crime committed, "if he knew at the time of committing such crime that he was acting contrary to law," i. e. to the law of the land. We further collect from *McNaghten's case*, that, when a person alleged to be afflicted with insane delusions respecting one or more particular subjects or persons is charged with the commission of a crime, and insanity is set up as a defence, the jury should be instructed, that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that, to establish a defence on the ground of insanity, it must be clearly shewn, that, at the time of the committing of the act charged in the indictment, the party accused was "labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what

106. The atrocity of the murder or other act charged, is no ground for the presumption of insanity. Reports *W. P.* 1853, part 2, page 1014.

107. Although a prisoner may have been under some fanatical impression that his thakoor had warned him to offer a human sacrifice, such a motive, with a person of sound and settled understanding in all the ordinary affairs of life, cannot be admitted as a legal extenuation of the crime of murder. Reports *L. P.* 1851, page 24. Nor can the assertion by the prisoner of some fanciful suspicion, as the motive of his crime, be admitted as any extenuation of it. *N. A. R.* vol. 6, page 110. Ungovernable rage springing from a cause which does not itself justify, or a diabolical impulse, cannot be admitted as an extenuation of murder. Reports *W. P.* 1853, part 2, page 941 ; 1854, part 2, page 61.

Fanatical impression or suspicion.

108. The legal test of insanity in the courts of this country is laid down in sect. 1, Act IV. 1849. No person can be acquitted for unsoundness of mind, unless it be proved that "by reason of unsoundness of mind, not wilfully caused by himself, he was unconscious,

was wrong." If the accused was conscious that the act in question was one which he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable. The usual course, accordingly, is to leave the question to the jury, whether the party accused had a sufficient degree of reason to know that he was doing an act which was wrong ; the question thus submitted being accompanied with such observations, and explanations as the circumstances of each particular case may require.

Another question of much interest also sometimes presents itself on a criminal trial :—If a person under an insane delusion as to existing facts commits an offence in consequence thereof, is he thereby excused ? The answer to this question is, that, if the accused labours under a partial delusion only, and is not in other respects insane, he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real. For example, if, under the influence of his delusion, he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes, in self defence, he would be exempt from punishment. If his delusion was, that the deceased had inflicted a serious injury on his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment.

To the evidence of scientific men conversant with the disease of insanity, who have examined and conversed with the accused person,—who can, besides testifying to his words and actions, explain the nature of the delusions under which he may be labouring, and the ordinary effect of such delusions upon the mental functions,—much weight will naturally be attached by a jury when engaged in the arduous task of investigating the question, whether one accused of crime was sane or insane at the time of its commission. Where, moreover, on the trial of such an issue, the facts of the case are admitted or not disputed, and the question becomes substantially one of science only, it may be convenient to ask a medical witness, who has been present during the trial, his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime, and as to his perception of the difference between right and wrong ; but, as we learn from *M'Naghten's case*, it is not a matter of right to put such a question.

Amongst medical practitioners, however, and those experts who have appeared as witnesses to give evidence touching insane and morbid delusions at criminal trials, a very wide difference of opinion exists on various important points relating to the responsibility of persons mentally affected, and mainly as to these fundamental questions ; Are there states and conditions of mind in which responsibility is modified only—not annulled ? May the insane be, in certain cases, fit objects for punishment ? Nay, further, may not punishment be so applied to some criminals of unsound mind that the reason of its application may be appreciated by them and beneficial results thence ensue ? It is the opinion of some scientific men, that much may be said in favour of a scale of punishment for the insane, graduated—so far as the results of experience and observation may permit—to their different degrees of responsibility and criminality. The enquiry hinted at, however, could scarcely, with propriety, be conducted in these commentaries, which profess to deal with the law as it is, not as, in the opinion of jurists, it ought to be. I will merely add, therefore, that when a person, upon his trial for an alleged crime, seeks to excuse himself upon a plea of insanity, it will be for him to make out clearly that he was insane at the time of committing the offence charged against him. The onus of so doing rests on him, and the jury must be satisfied that, at the time in question, he actually was insane. If the matter be left in doubt, it will be their duty to convict him, for, as already stated, "*Every man must be presumed to be responsible for his acts till the contrary be clearly shown.*" *Broom's Commentaries upon the Common Law*, page 379.

and incapable of knowing, at the time of doing the act, that he was doing an act forbidden by the law of the land." The medical officer should be examined as to whether, and on what precise grounds, he considers the prisoner to have been, at the time of committing the act charged, within the description above set forth. The witnesses to the prisoner's habitual state of mind should be examined in the presence of the medical officer, and he should be invited to propose any questions to them on his own part. He should then be carefully questioned as to the number of times he has himself seen the prisoner, the nature of his conversations with him, and all the circumstances from which, apart from the prisoner's real or professed religious delusions, he is led to regard him as of unsound mind. The questions should be expressed so as to elicit the opinion of the medical officer, after his having had the advantage of hearing the statements of the members of the prisoner's family, his neighbours, and other parties, as to the state of the prisoner's mind both *previously to* and *at the time of* the act charged, and *subsequently up to the time of trial*. Reports *L. P.* 1851, page 24. *N. A. R.* vol. 6, pages 144 and 346. Reports *W. P.* 1853, part 2, page 1020. It may be desirable also to take the evidence of the native doctor and hospital attendants: if the madness is only feigned, the prisoner would doubtless be much less on his guard with them than before the medical officer. *N. A. R.* vol. 6, page 333.

If the law officers of the Nizamut acquit on the ground of insanity, and the judges convict.

109. Two or more judges of the nizamut adawlut are competent to convict and punish a prisoner charged with a criminal offence, in opposition to his acquittal by their law-officers, in any case in which the futwa declares the legal penalty, or punishment generally, barred by reason of a doubt as to the prisoner's sanity when he committed the act charged; provided that the judges, on due consideration of the evidence, are satisfied that there is no sufficient ground to believe that the prisoner was insane when he committed the act so charged, and that he is a proper object of punishment. Reg. IV. 1822, sect. 7.

Insanity supervening subsequent to the perpetration of the crime, and prior to conviction.

110. The circumstance of supervening insanity, subsequent to the perpetration of a crime at a time when no degree of derangement existed, and prior to the conviction of the prisoner for such crime, having been declared by the law-officers, in a case of murder, to bar all capital or discretionary punishment, and to subject such person to diyut only,—in all such cases, viz. of a prisoner's being afflicted with insanity subsequent to the commission of any crime, and of his subsequent perfect recovery, the law-officers of the nizamut adawlut are to be called upon to declare what the futwa would have been, if such derangement had not intervened, and the judges are to pass sentence under the general regulations, and on consideration of all the circumstances of the case, the same as if no such malady had happened to the prisoner. Reg. IV. 1822, sect. 4.

If insanity proved after conviction.

111. The nizamut adawlut upon the report of the session judge, cancelled the sentence passed by the latter upon a prisoner, whose insanity at the time of the committing the offence, of which he was convicted, was established subsequently to conviction. *N. A. R.* vol. 6, page 80.

Special judgment to be given in such cases.

112. Whenever a person charged with any offence is acquitted, because he is within the exception made by the foregoing section, the court or jury is to give a special judgment or verdict, that he did the act charged against him, being then of unsound mind, so as to excuse him according to law. Act IV. 1849, sect. 2.

113. When prisoners are acquitted on the ground of insanity, the following form of sentence is to be adopted:—"With reference to the provisions of sects. 1 and 2, Act IV. 1849, I acquit the prisoner, because I find that he is entitled to a special judgment of acquittal, on the ground that he did the act charged against him, being then of unsound mind, so as to excuse him according to law." C. O. No. 2, January 13, 1854, *L. P.*

114. Whenever such special judgment or verdict, as aforesaid, has been given against any person, the court, before which the trial was had, is to order him to be kept in strict custody for such time and in such manner as to the government seems fit. Act IV. 1849, sect. 3.

And the prisoner is to be confined during the pleasure of government.

115. Whenever a person is acquitted of any offence because he is within the exception made by sect. 1, Act IV. 1849, the court before which the trial was had, is to order the prisoner to be kept in safe custody until the pleasure of government shall be known, and is immediately to report the result of the trial to the Secretary to Government, Judicial Department, and apply for the requisite instructions regarding the disposal of the prisoner. Session judges are to communicate direct with the government on this subject. Magisterial officers are to submit their applications to the government through the channel of the session judge's office. C. O. No. 29 of vol. 4, *W. P.* Such applications are to be accompanied by a copy and translation of the evidence which has been held to prove the insanity. C. O. No. 128, Feb. 7, 1854, *W. P.*

116. In all cases in which, before the passing of this Act, any person has been acquitted of any offence on the ground of insanity, lunacy, idiocy, or unsoundness of mind, such person may be kept in the same strict custody, in which persons may be kept, who shall be hereafter acquitted for unsoundness of mind. Act IV. 1849, sect. 4.

These rules apply to persons confined, after an acquittal on the ground of insanity, before the passing of the Act.

117. No person, against whom any such special judgment or verdict has been given, is to be entitled to be discharged out of custody, on being restored to soundness of mind, unless by order and at the discretion of government. Act IV. 1849, sect. 5.

No person in such predicament can be discharged without the order of government.

118. Whenever it appears to the government that any person, imprisoned by the sentence of any court, is of unsound mind, the government by a warrant, which is to set forth the grounds of belief that such prisoner is of unsound mind, may order the removal of such prisoner to a lunatic asylum, or other fit place of safe custody, there to be kept and treated as the government shall order; and, when it appears to government that such prisoner has become of sound mind, the government by a warrant directed to the person having charge of him is to remand such prisoner to the prison from which he was removed, if then still liable to be kept in custody, or, if not, is to order him to be discharged out of custody. Act IV. 1849, sect. 6.

If a person undergoing a sentence of imprisonment becomes of unsound mind,

119. The permission of government must be obtained for the removal to the insane hospital of a prisoner, who has become insane while under sentence. N. A. R. vol. 6, page 80.

120. Applications for the liberation of persons convicted of having committed penal acts while laboring under insanity, and directed to be kept in confinement until their restoration to reason, are invariably to be accompanied by a medical history of the prisoner's case from its coming under the notice of the local medical authority, of its peculiar features, together with an account of the patient's mental variations, his improvements, relapses, and final recovery,

Applications for the release of recovered insanens, are to be accompanied by medical history of the case.

Civil surgeon to keep on record such a professional history.

and a specification of the period during which he may have remained free from any return of the malady, or of symptoms denoting its approach. Unless this history be in every respect satisfactory and conclusive as to the restoration of the prisoner to a state of sanity likely to be permanent, the application must, for the sake of public safety, be disallowed. Magistrates should require the civil surgeon, or other medical officer having charge of the prison or the lunatic asylum, in case of his removal, to put on record a professional history of the nature described respecting each prisoner labouring under mental derangement, in order that the object proposed by this order may not be frustrated by mutations of incumbency in the situation of civil surgeon. C. O. No. 221 of vol. 3.

When a person is acquitted on the ground of insanity after trial on a charge of murder, the parties taking charge of him are to execute an engagement in a specific penal sum.

Forms of engagement.

121. On the occasion of delivering over to the care of their relations or friends individuals who have been acquitted by the nizamat adawlut, upon the ground of insanity, after trial on a charge of murder, if no specific penalty is mentioned in the bond, which the parties receiving charge of the liberated individuals are required to execute for the prevention of further mischief, it is to be apprehended that, from the undefined nature of the responsibility, engagements may be executed without due consideration, to the manifest danger of the community: in such cases therefore the magistrates are to require the parties taking charge of the person released to execute an engagement in a specific penal sum, suited to their rank and condition in life, to be forfeited in the event of their not taking such care of the individual committed to their charge, as may prevent his doing further mischief. Forms of engagement of security (with translations), prescribed for adoption in cases of persons convicted of having committed any penal act while in a state of insanity, are given in appendix C, No. 31. C. O. No. 325 of vol. 1; and No. 61 of vol. 3, L. P.

Meaning of the term "government."

122. The word government in this Act is to be taken to mean the governor, or governor in council, or other person or persons administering the government of the presidency or place where the trial is had. Act IV. 1849, sect. 7.

Practice and precedents in cases of crimes committed during insanity.

123. The following summary of the cases given in the old series of the Nizamut Adawlut Reports will shew the practice of that court on the trials of persons, who are, or appear, or profess to be, insane. But it must be remembered that the cases occurred prior to the enactment of Act IV. 1849.

124. Prisoner *acquitted* on proof of present and previous insanity, but detained in custody until the recovery of reason. Vol. 1, pages 19, 270. Vol. 2, pages 68, 383.

125. Prisoner *acquitted* on the ground of insanity or mental derangement, notwithstanding the want of all proof of previous aberration of intellect, and detained in custody until the recovery of reason. Vol. 1, pages 96, 192, 258. Vol. 2, page 260. Vol. 3, pages 239, 243. Vol. 4, pages 264, 267.(a)

126. Prisoner *acquitted* on the ground that the act was committed in a temporary fit of derangement produced by sudden irritation, and on proof of previous insanity; and detained

(a) When the prisoner has been detained in custody as insane, the court have required that he should not be released on recovery without a report to them in the following cases: Vol. 1, page 96. Vol. 2, pages 189, 238. Vol. 3, pages 239, 243:—and have not required such report in the following:—Vol. 1, page 192, 258. Vol. 2, page 260.

in custody until some relation or friend should undertake the charge of him, so as to prevent his doing future mischief. Vol. 1, page 127.

127. Prisoner *acquitted* on the ground that he committed the act in a sudden paroxysm of fever, and discharged. Vol. 1, page 300.

128. Prisoner *convicted*, the plea of insanity not being proved. Vol. 1, pages 128, 211. Vol. 2, page 344. Vol. 3, pages 60, 286. Vol. 4, page 176. Vol. 5, page 197.

129. Prisoner *convicted*, his standing mute being considered obstinacy or artifice. Vol. 1, page 357. Vol. 2, pages 365, 416. Vol. 3, page 158.

130. Prisoner *convicted*, the plea of insanity being set aside, and the act attributed to religious phrenzy. Vol. 1, page 384. Vol. 3, page 251.

131. In the case of the murder of a boy by his uncle without provocation and in the presence of witnesses, the court deemed the circumstances so extraordinary, that they returned the case with directions to ascertain the prisoner's state of mind previous to the occurrence. Vol. 4, page 230.(a)

132. Prisoner convicted, and sentenced to imprisonment for life, when the evidence to his state of mind, while in jail awaiting trial, led to the inference that the man was not in what can be considered a perfectly sound state of mind, when he committed the murder. N. A. R. vol. 6, page 333. So it was held that although a prisoner may not be entitled to acquittal on the grounds of insanity, yet that there may be circumstances connected with the general state of his mind which show an insane tendency, and render it proper that he should be exempted from capital punishment. Reports *L. P.* 1851, page 1527; and 1855, part 2, page 684.

133. Prisoner appearing to be insane at the time of trial, was ordered to be confined, with instructions that, on recovery of his reason, the evidence taken against him should be explained to him, his defence taken, and the law officer called upon for a fresh futwa. N. A. R. vol. 2, page 12.

134. Prisoner was tried while labouring under insanity, and acquitted by the judge on that ground. The court quashed the proceedings and required attention to C. O. No. 307 of vol. 1. Vol. 5, page 138.

r. ¶. 101.

135. A prisoner, who had been deaf and dumb from infancy, convicted of murder, was sentenced to death. He made his defence by signs communicated to and explained by his brother. It was proved that he was a professional latyal, and had been hired to participate in the outrage in which he committed the murder. The Court remarked, that a capacity to undertake and carry out a deed of this nature, argued that the prisoner's intelligence was well

Case of deaf and dumb man sentenced to death.

(a) In some cases the prisoner has been allowed the benefit of a doubt of sanity, when there appeared no motive for the commission of an act, of which it seemed *prima facie* that a man in his right mind would not be guilty (vol. 2, page 260; vol. 4, page 267; vol. 6, pages 107 and 281); but in another case (vol. 2, page 344) such consideration is distinctly disallowed, the court appearing to coincide with the circuit judge, who "considered it highly dangerous to the peace of society to permit murderers to escape justice, merely because an European judge, very imperfectly acquainted with the motives of action which prevail among the natives, could not discover the train of reasoning which induced them to perpetrate such diabolical acts." So also, vol. 6, page 163.

known and relied upon by his associates; and his defect of speech and hearing did not prevent him from communicating with others, nor deprive him of the means of making a defence on trial. Reports *L. P.* 1855, part 1, page 523.

Infancy.

136. The following synopsis of cases given in the Nizamut Adawlut Reports will show the practice of the court in regard to criminals of immature age.—At the age of 9 a prisoner was held not to be a fit subject for punishment; [vol. 1, page 152;] and beyond that period till 18 years of age, the youth of the prisoner has always been more or less considered in mitigation of punishment. A girl of the age of nine years and a few months, but who showed herself abundantly *doli capax*, was convicted of wilful murder, and sentenced to imprisonment for life; [vol. 1, page 213;] and in six other cases capital punishment was barred solely by reason of the non-age of the prisoner; [vol. 1, page 215; vol. 2, pages 2, 145, and 471; vol. 3, page 179; and vol. 5, page 53;] in these cases the age of the prisoner was respectively 14, 12, 16, 14, 13, and 18. Prisoners have been condemned capitally at the ages of 18 and 20; [vol. 4, page 265; and vol. 5, page 178.] Other instances are reported, in which the usual and merited punishment has been mitigated on account of youth; [vol. 1, page 148; vol. 2, pages 20, and 331; vol. 3, page 147; and vol. 4, page 305.] A youth was punished, on conviction of carnally knowing a girl aged eight years, at which age her consent was immaterial, with 15 ratans and 6 months' imprisonment; [vol. 2, page 452.] A boy only ten years old, being convicted by the *futwa* of rape on a girl only three years old, the court viewed it as an attempt only, and punished it as a misdemeanor with one year's imprisonment; [vol. 3, page 87.]

137. Where a girl of 10 years of age murdered her husband, it was proved by her own confession that she was well aware of the difference between actions, as she stated that she did not intend to murder, but merely to punish or hurt him; and it was held that she had an intelligence which made her responsible for the commission of criminal acts, although her judgment was yet immature. She was sentenced to imprisonment for 10 years. Reports *L. P.* 1853, part 2, page 57.

138. Although the *futwa* acquits the prisoner because the record does not establish that he has arrived at manhood, yet the court has power to pass sentence on him, if it be proved that, from his intelligence and capacity of judging as to the nature and consequences of his acts, he is a proper object of punishment. Reports *L. P.* 1853, part 1, page 895.

Intoxication.

139. As regards intoxication, the nizamut adawlut has held in practice, that although it cannot be admitted as a temporary defect of will so as to bar punishment in the same manner as infancy and insanity, yet it should be allowed weight in judging of motives and intentions. There is a great difference between an offence entered upon with deliberation and a criminal intent, and one committed without premeditation and unprovoked by previous enmity and malice.—Intoxication voluntarily caused, cannot of course excuse crime. But allowance might still be made, in awarding punishment, for a loss of reason so great, as that a person could scarcely be supposed to be conscious of his acts. Reports *L. P.* 1853, part 2, page 98. The court admitted the principle adopted in English law, that, though voluntary drunkenness cannot excuse the commission of crime, yet where, as upon a charge of murder,

the question is, whether an act was premeditated, or done only from sudden heat or impulse, the fact of the party being intoxicated has been held to be a circumstance proper to be taken into consideration. Reports *W. P.* 1855, part 2, page 663. Intoxication was considered as a ground of mitigation of punishment in the following cases; *N. A. R.* vol. 1, pages 157 and 247; vol. 2, pages 24 and 453; vol. 3, pages 6 and 33; and vol. 4, page 8. But it was not so considered in a case [vol. 3, page 216] in which it was shown that the prisoner had wilfully employed such means to nerve him to the commission of the crime; for there the guilt was premeditated and the malice constant; and “the drunken man, like his sword, was the mere instrument of giving effect to such intent.” In another case [vol. 1, page 23] the plea of intoxication was invalidated by the evidence.

140. The prisoner killed the deceased by order of his master, and under fear of immediate death in case of refusal. The futwas of both courts declared him not liable to *kisas*, and that he should be released.* The Court accordingly directed his immediate discharge. *N. A. R.* vol. 1, page 101. Where a nephew killed his uncle at the request and by the command of the latter, under the threat of death in case of refusal, and it was proved, that he could have refused, as the murder was committed with the sword which the uncle gave to the prisoner for that purpose, he and the others present were sentenced to 14 years' imprisonment in banishment, and to lesser periods of imprisonment according to the degree of implication. Reports *W. P.* 1854, part 2, page 573.

Compulsion.

* *cf.* ¶ 98.

141. In a case of fraud, it was held that the session judge erred in acquitting certain of the prisoners “because being defenceless persons they acted on compulsion, and unhesitatingly confessed what they had done.” These circumstances, the sudder court remarked, furnished sufficient ground for mitigation of punishment; but they did not justify a positive acquittal. The prisoners were perfectly aware that they were aiding and abetting a fraud, and there was no *compulsion* in the case. Reports *W. P.* 1851, page 25.

142. The orders of a superior authority cannot be held to justify a gross infraction of the peace, or other offence, committed under circumstances which can leave no doubt on the mind of the offenders of the criminality of the act;—although such consideration may be allowed weight in allotting the quantum of punishment; *N. A. R.* vol. 3, page 128. But a person may be justified if the criminality of the act is not obvious, and if he considers himself bound to obey the party from whom he receives instructions to commit it. *N. A. R.* vol. 2, page 330.

Orders of a superior.

143. It is not the practice of the courts, to include wives, who are presumed to be under the influence of their husbands, in the sentence and punishment awarded to the male offenders; unless some individual act be distinctly proved against them of a nature to bar the operation of this rule by showing that they acted independently, and not under the influence of their husbands. Reports *W. P.* 1853, part 2, page 1142. The mere receipt from the husband of property stolen by him is not punishable. Reports *W. P.* 1854, part 1, page 93.

Wives under the influence of husband.

144. A husband and wife should not be indicted jointly as receivers of stolen property found in their house, unless it be in evidence that the latter acted independently, and not under the influence of her husband. *N. A. R.* vol. 1, page 353; and vol. 6, page 92.

SECTION III.

OF PRINCIPALS AND ACCESSARIES.

**English
Law.**

145. When two or more persons are charged with the commission of a felony, they are considered as either—*first*, principals in the first degree; *secondly*, principals in the second degree; *thirdly*, accessaries before the fact; or *fourthly*, accessaries after the fact. And in either of these characters they are felons in consideration of law; for he who takes any part in a felony, is in construction of law a felon, according to the share which he takes in the perpetration of the offence.

Principal in the
first degree.

146. A principal in the first degree is one who is the actor or actual perpetrator of the fact. But it is not necessary that he should be actually present when the offence is consummated; for if one lay poison purposely for another, who takes it and is killed, he who laid the poison, though absent when it was taken, is a principal in the first degree. So, it is not necessary that the act should be perpetrated with his own hands; for if the offence be committed through the medium of an irresponsible or innocent agent, the employer, though absent when the act is done, is answerable as a principal in the first degree. But if such agent is aware of the consequences of his act, he is a principal in the first degree, and the employer, if he be absent when the fact is committed, is an accessary before the fact; or, if he be present, a principal in the second degree.

Principal in the
second degree.
Aiders and abet-
tors.

147. Principals in the second degree are those who are present aiding and abetting at the commission of the fact.—They are called also aiders and abettors, and sometimes accomplices, but the latter appellation will not serve as a definition, because it includes all the participes criminis.—This presence need not always be an actual immediate standing by, within sight or hearing of the fact; but there may be also a constructive presence, as where one commits a murder, and another keeps watch or guard at a distance. But he must be sufficiently near to give assistance; and the mere circumstances of a party going towards a place, where a felony is to be committed, in order to assist to carry off the property, and assisting in carrying it off, will not make him a principal in the second degree, unless, at the time of the felonious taking, he were within such a distance as to be able to assist in it.—If an act is committed in pursuance of a previous concerted plan, parties not present, or in such proximity, are not principals, but accessaries before the fact. So, if one of them have been apprehended before the other have committed the offence, he can be considered only as an accessary before the fact. But presence during the whole transaction is not necessary, as where several persons combine to forge an instrument, and each executes by himself a distinct part of the forgery, and they are not together when the instrument is completed, they are, nevertheless, all guilty as principals. There must also be a participation in the act; for merely standing by and not attempting to prevent the felony, or to apprehend the felon, does not make a man a principal.—But if one encourage another to commit suicide, and be present abetting him while he does so, such person is guilty of murder as a principal; and if two persons encourage each other to self-murder and one kills himself, but the other fails in the attempt, he is a principal in the murder of the other. So likewise, if several persons com-

bine for an unlawful purpose, or for a purpose to be carried into effect by unlawful means; particularly if it is to be carried into effect notwithstanding any opposition that may be offered against it; and one of them, in the prosecution of it, kill a man, it is murder in all who are present, whether they actually aid or abet or not, provided the death were caused by the act of some one of the party in the course of his endeavours to effect the common object of the assembly. But the act must be the result of the confederacy; for if several are out for the purpose of committing a felony; and, upon alarm and pursuit, run different ways; and one of them kill a pursuer to avoid being taken; the others are not to be considered as principals in that offence. The purpose must also be unlawful; for, if the original object be lawful, and be prosecuted by lawful means, should one of the party in the prosecution of it kill a man, although the party killing, and all those who actually aid and abet him in the act, may, according to circumstances, be guilty of murder or manslaughter, yet the other persons who are present, and who do not actually aid and abet, are not guilty as principals in the second degree. There must be a felonious participation in the design, as well as a participation in the act.—Aiders and abettors may be tried before the principal in the first degree has been found guilty; and may be convicted, even though he is acquitted.

148. An accessory before the fact is he who, being absent at the time of the offence committed, doth yet procure, counsel, command, or abet another to commit a felony; and he also is so considered, who shows an express liking, approbation, or assent to the felonious intent of another, although he gives no encouragement or hope of any immediate help or assistance. But he who barely conceals a felony, which he knows to be intended, is guilty only of misprision of felony, and is not an accessory. The difference between a principal in the second degree, and an accessory before the fact, lies in this, that the former must be *present* aiding and abetting: but it is essential, to constitute the offence of accessory, that the party should be absent at the time the offence is committed. A man may be an accessory before the fact by the intervention of a third person, as he who procures a felony to be done is a felon.—There can no accessories before the fact in those offences, which by judgment of law are sudden and unpremeditated, as manslaughter and the like; and all persons concerned in crimes under the degree of felony are principals.—An accessory cannot be guilty of a higher crime than his principal.—If the principal totally and substantially *varies* from the terms of the instigation; if being solicited to commit a felony of one kind, he wilfully and knowingly commit a felony of another; he will stand single in that offence, and the person soliciting will not be involved in his guilt;—but it is different, if the principal *complies in substance* with the instigation of the accessory, varying only in circumstance of time or place, or in the manner of execution; or where the principal goes beyond the terms of the solicitation, if in the event the felony committed was a probable consequence of what was ordered or advised.—If the principal *by mistake commits a different crime* from that to which he was solicited by the accessory; as *e. g.* if A counsels B to kill C and he by mistake kills D;—the accessory is answerable only when the crime committed is the probable consequence in the ordinary course of things of his flagitious advice. Accessories before the fact may be tried whether the principal has or has not been convicted; but, if once tried as accessories, they are not liable to be again tried for the same offence.

Accessory before
the fact.

Accessory after
the fact.

149. An accessory after the fact is one who, knowing a felony to have been committed by another, receives, relieves, comforts, or assists the felon. Any assistance given to one known to be a felon, in order to hinder his being apprehended, or tried, or suffering the punishment to which he is condemned, is a sufficient receipt to make a man an accessory of this description; so also to convey instruments to a felon to enable him to break jail, or to bribe the jailer to let him escape; also whoever rescues a felon from an arrest for the felony, or voluntarily and intentionally suffers him to escape is an accessory to the felony; but not if he merely suffers the escape by omission: and it has been said, that those are in like manner guilty who oppose the apprehending of a felon. But a person is not an accessory after the fact, if he supply a felon in prison with victuals or other necessities for his sustenance; or relieve or maintain him if he be bailed out of prison; or if a physician or surgeon professionally attend a felon sick or wounded, although he know him to be a felon; or if a person speak or write in order to obtain a felon's pardon or deliverance; or advise his friends to write to the witnesses not to appear against him at his trial, and they write accordingly; or even if he himself agree, for money, not to give evidence against the felon; or know of the felony and do not discover it. He must be proved to have done some act to assist the felon personally. But if he employ another person to do so, he will be equally guilty as if he harboured or relieved him himself. A man may be an accessory after the fact, by receiving one who was an accessory before, as by receiving a principal;—and it has been holden, that a man may make himself an accessory after the fact to a larceny of his own goods, or to a robbery on himself, by harbouring or concealing the thief, or assisting in his escape. The receiver must have had notice, either expressed or implied, of the felony having been committed, in order to make him an accessory by receiving the felon; and the felony must also be complete at the time of the assistance given. A wife is not made an accessory by receiving her husband; but the latter may be an accessory for the receipt of his wife. And no other relation of persons can excuse the wilful receipt or assistance of a felon; a father cannot assist his child, a child his parent, a brother his brother, a master his servant, or a servant his master. If the wife alone, the husband being ignorant of it, receive any other person being a felon, the wife is accessory and not the husband: and if the husband and wife both receive a felon knowingly, the wife is acquitted. Accessaries after the fact cannot be tried before the conviction of their principal, unless they consent to it; but having been once duly tried they cannot be again tried for the same offence.

Punishment.

150. The rule of the ancient law was, that accessaries should suffer the same punishment as their principals; but this is modified now. It seems that principals in the second degree, wherever mentioned in statutes, are made punishable in the same manner as principals in the first degree; but when by the construction of any particular statute principals in the second degree are not punishable by death (as when the punishment is imposed upon the person committing the offence, and not upon the offence by name), and no punishment is prescribed by the statute, they may be transported for seven years, or imprisoned for two. Accessaries before the fact are in the same manner generally made liable to the same punishment as principals in the first degree; but they are not punishable by death unless it is so expressly provided by statute; and if no penalty is provided, they may be punished equally

with principals in the second degree, as noted above. Accessories after the fact are not punishable by the common law for receiving, harbouring, or maintaining the principal in offences under felony; but in some few cases a penalty is inflicted by statute. Yet in those cases if the act of the receiver amount to a rescue, or the like, he is indictable for a misdemeanor. They are also liable to the same punishment as principals in the second degree, when no specific penalty is provided; but several of the later statutes have established the proportion which the guilt of accessories after the fact bears to that of accessories before the fact, in as much as they make the former subject to imprisonment for any period not exceeding two years, while the punishment of the latter extends to three years.(a)

151. It seems to be the general principle of Mahomedan law, that all parties concerned in an offence, whether as principals or accessories, are equally guilty, and are therefore liable to the same punishment. This appears from the books; but in practice the law-officers of our courts generally adjudge discretionary punishment to the aiders and abettors when the principals are declared liable to *kisas* or *hudd*. Privity to the commission of a crime, and concealment thereof, is also held to be an offence punishable by *seasut*.

Mahomedan Law.
General principle.

152. "In a case of a single murder by a number of persons, the whole are liable to suffer death, although the principle of retaliation, which necessarily implies equality between the offence and the punishment, requires the capital punishment of only one. In this instance analogy is abandoned for more approved construction of the law (*istahsan*), because murder is most frequently committed by force, and retaliation has been ordained for the purpose of determent. Each individual is, therefore, as if he alone had committed the act; and consequently equality is certified, and retaliation incurred, that the lives of mankind may be in security." But according to one authority (quoted by Harington) this doctrine "is applicable to those only among the criminals who have given a mortal wound to the slain; and therefore accomplices employed in watching, or even those who assist in holding the hands and feet of the person murdered, are not liable to *kisas*; but may be punished in any mode of exemplary punishment (*seasut*) at the discretion of the magistrate."(b)

Accessories in a case of murder.

153. So also in gang-robbery, according to analogy, the punishment of amputation should be inflicted on such only among the gang, as have actually carried out the property, because the offence is complete as regards them only; but by *istahsan* they are all punished equally. Some hold that they are all by construction equally concerned in the carrying out of the property, as aiding therein by watching or resisting opposition; "and that therefore, if these were not liable to amputation the door of punishment would be closed."(c) The latter opinion, if generally acknowledged, and carried out, would make the general principle of the Mahomedan and the English laws coincident.

In gang-robbery.

154. "If any one of a gang of robbers commit murder, the prescribed punishment is inflicted upon the whole; because the punishment in this instance is considered as a penalty for the assault of the whole, which is established by each of them being aiding and abetting to the other."(d)

In gang-robbery attended with murder.

(a) Much of the above is taken from "Archbold's Pleading and Evidence in Criminal Cases."

(b) Hed. Trans. vol. 4, page 302. Harington's Analysis, vol. 1, page 262.

(c) Hed. Trans. vol. 2, page 104.

(d) Hed. Trans. vol. 2, page 139.

If one of the persons concerned is incapable of committing crime.

* v. Preamble to Reg. LIII. 1803.

155. "If any one among the gang of robbers is an infant, or a lunatic, or a relation within the prohibited degrees of the person robbed, punishment is remitted, not only with respect to this person, but also with respect to all the rest of the party."* This is the opinion of Haneefah and Ziffer; but Abou Yoosuf contends that this rule only obtains when such person is the actual perpetrator of the crime; and he founds his opinion on the argument, that if the offence is not complete in regard to the principal, so neither can it be in regard to the aiders and abettors; but that the completeness of the offence committed by the principal is not affected by a defect in the accomplices. The argument of Haneefah and Ziffer is, that "the robbery is a single offence committed by the whole party, and that is the cause of the punishment; but where it happens that the act of *some* of them is not an occasion of punishment, the act of the others is then only a *part* of the cause, and an effect cannot be established by a *part* of a cause."(a)

156. The opinion of Abou Yoosuf appears to be upheld by an argument of Imam Mahomed in another place, in which he says, that "in *zina* the man is the principal, and the woman only the accessory; now the prevention of punishment in respect to the principal occasions the prevention of it in respect to the accessory; but the prevention of punishment with respect to the accessory does not occasion the prevention of it with respect to the principal. So if a man commit *zina* with a girl who is an infant or insane, he is liable to punishment, but no penalty is inflicted on the woman; but if a woman admit an idiot to commit *zina* with her, neither of the parties is punishable."(b)

Regulation Law.

General principle.

157. In general the regulations, in enacting the penalty for any particular offence, make the accomplices liable to the same punishment as the principals; as *e. g.* in the case of dacoity by section 4, Reg. LIII. 1803. And we may therefore take such to be the general principle of the law, though in practice a more lenient judgment is almost always considered sufficient for those not taking the actual lead in the designing or execution of the offence.

Explanation of privity; and the distinction between being privy, and being accessory to a crime.

158. The act which constitutes that is called "privity" in this country corresponds with "misprision of felony" in English law, viz. the concealment or the procuring the concealment of a felony which a man knows but never assented to, or the observing silently the commission of a felony without using any endeavours to apprehend the offender; it is therefore strictly an offence of a negative kind consisting in the concealment of something that ought to be revealed. Accessaryship, on the other hand, is an offence of a positive kind and of a higher degree of criminality, implying an active participation, either by procuring, counselling, commanding, or abetting another, to commit a felony; or, with a knowledge that a felony has been committed by another, by receiving, relieving, comforting, or assisting the felon. The distinction between the two offences is marked: the one is a misdemeanor in English law, the other is a felony; the one is in its kind negative, requiring nothing but silent passive acquiescence in the commission of a felony to constitute it; the other is a positive participation in the commission of a felony, either by counsel and command before the fact, or by relief and assistance given to the felon after the fact. In selecting the following corresponding terms in the vernacular for these offences, the court have had regard to the fact

(a) Hed. Trans. vol. 2, page 134.

(b) Hed. Trans. vol. 2, page 80.

that, as either the constructive or actual presence of the accused at the time when the crime is committed is necessary to constitute complicity on his part, so the absence of the accused is essential to the charge of being an “accessary;” or, in other words, he who is present aiding and abetting in the commission of a felony may be an accomplice or a principal, but he cannot in the legal sense of the words be either accessary or privy to its commission.

Accomplice,	شریک بوقت وقوع جرم	(مکفی)	
Accessary before the fact, ...	شریک ماقبل وقوع جرم	(অপরাধের পূর্ষ সহকারি)	
Accessary after the fact, ...	شریک مابعد وقوع جرم	(অপরাধের পর সহকারি)	
Accessary before and after the fact, ... }	شریک ماقبل اور مابعد وقوع جرم	(অপরাধের পূর্ষ ও পর সহকারি)	
Privy,	راز داری	(জ্ঞাতসারিতা)	
Aiding and abetting,	اعانت	(সহায়তা)	

Terms to be used in the vernacular.

C. O. No. 8 of vol. 4.

159. An accomplice is he who aids and abets personally in the commission of a felony; an accessary before the fact is he who, absent at the time of the commission of a felony, procures and abets another to commit it. Reports *L. P.* 1852, part 1, page 569.

Distinction between accomplice and accessary before the fact.

160. The mere proof of the presence of the prisoner at the time of the assault, cannot be taken as a sufficient proof of criminal privity to the fact. *N. A. R.* vol. 6, page 228. But where the prisoner only stood passively by while his brother murdered a person against whom they had the same cause of enmity [and he might apparently have prevented the murder], he was convicted as a principal in the second degree. Reports *W. P.* 1855, part 1, page 254.

Actual presence not alone proof of guilt. But presence without interference may be criminal.

161. The court adopted the rule from English law, that if several persons be united in a criminal purpose, and any of them do any criminal act beyond the scope of such design, such of them as are not privy or assenting to the criminal act done, are not responsible for it. (a) Reports *L. P.* 1852, part 1, page 414.

How far criminal association affects others when the act of one is beyond the original design.

162. Where the prisoner, on being arrested, when part of the stolen property was found in the possession of his son, executed an *ikrarnamah* promising to restore all the property to the plaintiff in the course of four months, and the plaintiff accepted it,—held that he could not be convicted of privity to the theft on the ground afforded only by such *ikrarnamah*. *N. A. R.* vol. 6, page 135.

Promise to restore property stolen not sufficient evidence of privity to theft.

163. It was held that the concealment by a police officer of a murder, which was at the time only a matter of suspicion, and the actual perpetrators of which were unknown to him, did not constitute accessaryship after the fact. Reports *L. P.* 1855, part 2, page 723.

Concealment by police officer of crime suspected does not make him an accessary.

164. So, where a chokeedar was present at the time of the occurrence [as a spectator], and the magistrate punished him with six months' imprisonment for concealing the crime, the

Nor can mere presence convict him of complicity or privity;

(a) But, as it was laid down in the *Frimley-grove* burglary with murder, where all parties are equally determined to resort to violence to carry out the illegal object contemplated, the act of one is the act of all; and every one concerned is, in the eye of the law, and also according to common sense and reason, equally guilty.

nor the giving false information.

Same rule applies to zumeendars and others required to give information.

Privy in any case within the competency of magistrate.

Accessory may be found guilty though principal is unknown or acquitted.

Conviction of privy cannot be had without proof of the substantial offence.

Practice and precedent.

court held that the course pursued by the magistrate was correct. Reports *L. P.* 1854, part 2, page 608. And where a chokeedar give false information at the thana regarding the cause of death, he was acquitted on the charge of being an accessory after the fact on the ground that he should have been punished under the general laws for neglect of duty(a). Reports *L. P.* 1854, part 1, page 517; and 1856, part 1, page 965.

165. Zumeendars also, and others required to give information of occurrences to the police, are liable in the case of concealing knowledge to punishment only for neglect of duty(a). Reports *L. P.* 1854, part 1, page 517.

166. Privy to murder (and therefore to any other offence) is punishable by a magistrate of his own authority. Reports *L. P.* 1855, part 2, page 529.

167. If the fact of the crime, as murder, be established, there is no reasonable ground why a person should not be convicted on his credible and credited confession of having been privy, although another person charged with the murder be acquitted of it. *N. A. R.* vol. 3, page 97. And in general practice it seems in no way necessary to the conviction of an accessory that the principal should be first convicted or even known.

168. There cannot be a conviction of privy to an offence, the commission of which is not proved in evidence. Thus, where the dead body of the prisoner's wife was found suspended by the neck; and it was proved that he had absconded after fastening the door from the outside, in which state it was found; and the prisoner asserted in his defence that he had absconded because his wife had hung herself; he was acquitted because there was no evidence to prove that the woman had been murdered. Reports *L. P.* 1854, part 2, page 269.

169. A few examples from the old series of reports will suffice to show the practice of the nizamat adawlut in weighing the different degrees of guilt of the various participes criminis;—in many cases principals and accessaries have received the same punishment.

170. Four prisoners charged with murder. The principal was sentenced capitally; one convicted of being an accessory before the fact, and of bringing a false accusation of murder against an innocent person, was sentenced to imprisonment for life; and the remaining two convicted of privy to the crime after the fact, and concealing their knowledge thereof, were sentenced to imprisonment for three years. *N. A. R.* vol. 4, page 235.

171. Four prisoners charged with murder and robbery. One was sentenced as an accomplice to suffer death; another, convicted of privy after the fact, and receipt of the plundered property, to imprisonment for fourteen years; the third, of privy before the fact, to fourteen years; and the fourth of privy after the fact to seven years' imprisonment. *N. A. R.* vol. 3, page 355.

(a) In another trial, when the judge remarked that the magistrate ought to have committed the gomastah and the chokeedar on a charge of concealment of the crime instead of punishing them for neglect of duty, it was observed by the sudder court that it was not "absolutely necessary" to commit them to the sessions on such charge, because they were punishable by the magistrate for neglect of duty. This would seem to imply that such persons might have been legally committed and punished for privy. See Reports *L. P.* 1854, part 1, page 600.

172. Five prisoners charged with murder. One as an accomplice was sentenced to imprisonment for life ; two others, as accessaries after the fact and for receiving part of the stolen property, to imprisonment for fourteen years ; and the remaining two, as accessaries after the fact, and concealing their knowledge thereof, to imprisonment for one year. N. A. R. vol. 5, page 186.

173. Two prisoners charged with murder. The one convicted as an accomplice, and the other as an accessary after the fact, were sentenced to imprisonment for life and seven years respectively. N. A. R. vol. 4, page 5.

174. Nos. 1 and 2 convicted of concealment of murder, and throwing the body of the murdered person into the river ; No. 3 of being an accomplice in the concealment ; and No. 4, a chokeedar, of not giving information after having seen the corpse :—sentence, Nos. 1 and 2 imprisonment for two years ; Nos. 3 and 4 for one year. N. A. R. vol. 4, page 2.

175. Plunder :—the leader was sentenced to imprisonment for twelve years ; the two principals for ten years ; and the other three prisoners, as inferior agents, for seven years. N. A. R. vol. 5, page 1.

176. Murder :—two as principals were sentenced to death ; and another, convicted of instigating, aiding, and abetting, to imprisonment for life. N. A. R. vol. 2, page 5.

177. Murder :—Three as accessaries were sentenced to imprisonment for life ; another, convicted of being present and cognizant of the intent, for fourteen years ; and another, of aiding and abetting, for seven years. N. A. R. vol. 3, page 282.

178. Culpable homicide :—No. 1 convicted of beating the deceased so as to cause death, was sentenced to imprisonment for five years ; and No. 2, of instigating and commanding the beating, for three years. N. A. R. vol. 4, page 129.

179. Affray :—The prisoner though there was no proof that he was actually present, was convicted of having instigated and directed an affray attended with homicide and wounding, and was sentenced to imprisonment in banishment for life. N. A. R. vol. 1, page 8.

CHAPTER III.

OF SUBJECTS RELATING TO THE CONDUCT OF CASES.

SECTION I.

OF JURISDICTION.

General.

180. It has been shown in a former chapter, that the criminal courts established by the East India Company, superseded and supplied the place of those, which formerly existed under the native government; and it follows therefore that all native subjects of the British government as well as all other persons not specially excepted by law, are amenable to those courts for crimes and misdemeanors committed by them within the limits of the presidency of Fort William, except as regards the local jurisdiction of the Supreme Court, and those portions of territory to which, although under British rule, the general regulations have not been extended.

Supreme court.

181. The magistrate of the twenty-four pergunnaahs^(a) has no jurisdiction or authority whatever in the town of Calcutta, or any places adjacent within the limits of the jurisdiction of the supreme court. Reg. IX. 1793, sect. 3.

By birth of offender.

European British subjects.

182. European British subjects, resident in the mofussil, are not subject to the local authorities in regard to Acts of the Government of India, which do not contain an express declaratory provision to that effect. Const. No. 1296.

Europeans, not British subjects.

183. All Europeans, not British subjects, are amenable to the authority of the criminal courts within whose jurisdictions they may be apprehended and brought to trial, in common with the natives of the country. *Beng. Reg.* II. 1796, sect. 2, cl. 1. *Ben. Reg.* XVI. 1795, sect. 4. cl. 1. *Ced. Prov. Reg.* VI. 1803, sect. 19, cl. 1.

Children of a British subject.

184. The legitimate child of a British father is not amenable to the mofussil courts; but his illegitimate offspring may be so amenable, because illegitimate children are considered as of the same country as their mother. Consts. Nos. 978 and 806.

185. A person born in wedlock at Madras; his father being a German, and his mother a Scotchwoman; was declared by the advocate general to be a British subject, and amenable only to the supreme court. *N. A. R.* vol. 2, page 111.

Courts to preserve their own jurisdiction.

186. The criminal courts are not to proceed to try and sentence a person, whom they may themselves have fair reason from any cause to regard as probably not subject to their

^(a) And à fortiori any other magistrate.

jurisdiction, without making all practicable inquiry to satisfy themselves on the point. (a)
C. O. No. 33 of vol. 4.

187. Although the regulations of government contain no specific provision to the effect, it is nevertheless an established principle of law and usage, that persons charged with criminal offences shall (save under special ground of exception) be tried for the same in the criminal courts, within the jurisdiction of which the acts charged may have been committed. Preamble to Reg. VIII. 1822.

By locality of offence.

General principle.

188. A concurrent jurisdiction is vested in the magistrates of the several zillahs in the cases and under the restrictions following; viz. one magistrate may empower his police, under his warrant, to pursue persons charged with crimes or misdemeanors into the jurisdiction of another magistrate; and the latter, as well as all persons having authority or residing in the jurisdiction into which the offenders are pursued, are required to afford every assistance in their power to the pursuing officers for the apprehension of the offenders. But this authority vested in the magistrate extends only to cases, in which the offence has been committed within his own jurisdiction, or where the offender was actually within his jurisdiction at the time when the charge was preferred against him. The magistrate of one zillah cannot issue a warrant for the apprehension of any offender, being in another zillah at the time of the complaint being preferred, for any crime not committed within the limits of his jurisdiction. In such cases the complainant must apply in the first instance to the magistrate of the zillah in which the crime was committed, or in which the offender may reside or be found. *Beng. Reg. XXII. 1793, sect. 16. Ben. Reg. XVII. 1795, sect. 15. Ced. Prov. Reg. XXXV. 1803. sect. 16.*

Concurrent jurisdiction of magistrates in matters of police.

Restrictions.

189. A magistrate cannot apprehend any person charged with an offence committed beyond the limits of his own district, and not actually being or residing therein when complaint was preferred. *Const. No. 404.*

190. The warrant of any magistrate, or justice of the peace, having jurisdiction in any part of the territories under the government of the East India Company, for the arrest of any person charged with having committed any offence, whether such warrant be issued under the provisions of this Act or not, may be executed within the jurisdiction of any other magistrate, or justice of the peace, having jurisdiction in any part of the said territories, whether in the same presidency or not, upon having a written authority under the hand and seal of the magistrate or justice of the peace, within whose jurisdiction it may be executed, previously endorsed thereon, and which endorsement may be to the following effect:—

Warrant issued by one magistrate may be executed in the jurisdiction of another, if endorsed by the latter.

To the nazir [or other officer as the case may be] of the zillah of

This warrant may be executed in the zillah or district of———(describing the zillah or district of the endorsing magistrate or justice of the peace) by any of the officers to whom the same is directed or by———[describing by his name of office the officer to whom a

(a) For further rules regarding the amenability of European British subjects to the Company's courts see Book 8, chapter 1.

similar warrant, issued by the endorsing magistrate or justice of the peace, would be directed]. Act VII. 1854, sect. 5.

No responsibility attaches to the magistrate so endorsing the warrant.

191. The magistrate endorsing a warrant in pursuance of the provisions of sect. 5 of this Act shall not be liable to any action or other proceeding in consequence of any illegality in the issuing of the warrant; but any magistrate illegally or improperly issuing the same shall be liable for an arrest in pursuance of the endorsement, in the same manner and to the same extent only as if the warrant had been executed within his own jurisdiction. Act VII. 1854, sect. 6.

Person arrested under such warrant how to be disposed of.

192. Upon the apprehension of the supposed offender, if the offence be alleged to have been committed in any part of the territories under the government of the East India Company, he shall be carried before the magistrate within whose jurisdiction the offence shall be alleged to have been committed, and shall be by him dealt with according to law; unless by the warrant the officer be authorized to take bail or security, and such bail or security be given for the appearance of the person accused before the magistrate or justice of the peace of the zillah or district in which the offence shall be alleged to have been committed. Act VII. 1854, sect. 7.

In such case magistrate issuing warrant to send the depositions, or copies, to magistrate before whom the offender is carried.

193. If any person shall, in pursuance of this Act, be carried before a magistrate or justice of the peace, other than the one who issued the warrant; or a magistrate, or justice of the peace, for the time being of the same zillah or district; the depositions and documents upon which the warrant was issued, or copies thereof, to be certified under the hand and seal of the magistrate or justice of the peace of the zillah or district in which the warrant was issued, shall, upon the requisition of the magistrate and justice of the peace before whom such person shall be carried, be forwarded to such magistrate or justice of the peace. Act VII. 1854, sect. 9.

All criminal process may be executed in any part of India, after having been endorsed by the magistrate of the place where it is executed.

But special grounds must be shown and recorded before summons or subpoena is issued beyond jurisdiction.

194. Any criminal process whatever, including summonses, subpoenas, and search warrants, as well as warrants of arrest, issued by any magistrate having jurisdiction in any part of the territories under the government of the East India Company, may be executed within the jurisdiction of any other magistrate having jurisdiction in any part of the said territories, whether in the same Presidency or not, upon having a written authority under the hand and seal of the magistrate, within whose jurisdiction it may be executed, previously endorsed thereon. Provided that no summons or subpoena is to be issued by a magistrate to compel the attendance of a defendant or witness from any place beyond the local limits of his jurisdiction, unless special grounds shall be proved to the satisfaction of the magistrate in support of the application, which grounds are to be recorded before the summons or subpoena is issued. Act XVII. 1856, sect. 1.

Magistrate endorsing process not liable for illegality in the issuing thereof.

195. The magistrate endorsing any process under this act shall not be liable to any action or other proceeding in consequence of any illegality in the issuing of the process; but any magistrate illegally or improperly issuing the same shall be liable for any act in pursuance of the endorsement, in the same manner, and to the same extent only, as if the process had been executed within his own jurisdiction. Act XVII. 1856, sect. 2.

196. The provisions of Act VII. 1854, and of this Act, do and shall extend and apply to any warrant or other process of any magistrate having jurisdiction in the territories beyond the local limits of the supreme court, which shall be executed within those limits. Provided that, if a magistrate having jurisdiction within those limits shall object to endorse any warrant or other process on account of any apparent defect therein, or for any other cause, he shall refer such warrant or other process to a judge of the supreme court, who shall deal therewith according to the provisions of Act XXIII. 1840. Act XVII. 1856, sect. 3.

Provisions of Act VII. 1854, and of this Act, applicable to process executed within limits of supreme court. But magistrate may refer to judge, if he objects.

197. The word "magistrate," as used in this Act, includes a joint magistrate, or any person lawfully exercising the powers of a magistrate, and also a justice of the peace. Act XVII. 1856, sect. 4.

Term magistrate means also joint magistrate, and justice of peace.

198. Any magistrate, or justice of the peace, acting under the provisions of this Act, shall issue all necessary warrants, orders, and directions for carrying this Act, and also any order made under it by government, into effect, under his signature and seal, or seal of office, if he shall have a seal of office; and all magistrates and officers acting in pursuance of this Act shall have and exercise the same powers, as if the offence charged had been committed within the zillah or district subject to their jurisdiction; and in cases where the accused may have been held to bail, the magistrate may order the bail-bond to be renewed in such form as may be necessary to carry any order of government into effect; and, if such bail-bond shall not be renewed accordingly, may commit the persons accused to prison for such period as may be necessary to carry such order into effect. Act VII. 1854, sect. 16.

Magistrate to issue warrants &c., and to have the same powers, as if the offence had been committed within his jurisdiction.

199. In case any person arrested under this act shall escape out of custody, he may be re-taken in any part of the territories under the government of the East India Company, in the same manner as if he had escaped from custody under process for an offence committed in that part of such territories in which he shall be found. Act VII. 1854, sect. 17.

Prisoner so arrested who escapes may be re-taken any where, as if for an offence committed where he is found.

200. The word "magistrate," as used in this Act, is intended to include a joint magistrate, or any person lawfully exercising the powers of a magistrate, and also a justice of the peace. Words in the singular number are intended to include the plural, and words in the masculine gender to include the feminine. Act VII. 1854, sect. 25.

Meaning of terms used.

201. The government may invest a magistrate with a general concurrent authority as joint magistrate, in any contiguous or other jurisdiction or jurisdictions, or any part thereof. Reg. XVI. 1810, sect. 3.

Magistrate may be vested with a general concurrent authority as a joint magistrate.

202. Nothing in the regulations is to be construed to empower a magistrate to try and pass sentence on, or to commit to the sessions, any person charged with an offence not perpetrated within the limits of his district, except under special authority from government, or the nizamat adawlut. If it should appear, in the course of the investigation of any case, that the act charged was not perpetrated within the limits of his district, but in some other jurisdiction, the magistrate, who commenced the proceedings, or is conducting the investigation, is to send over the parties and witnesses, together with all the proceedings he has held thereon, to the magistrate of the district within which the crime appears to have been com-

Offence perpetrated in another district.

Case to be transferred.

Proviso.

mitted, in order that the parties may be there dealt with according to law. If, however, the immediate adoption of this course would be attended with great inconvenience to the parties and witnesses, or if there are circumstances which make it advisable that the trial should be brought on or completed at the station, at which the proceedings were instituted, the magistrate may suspend such transfer, and report to the nizamut adawlut. This rule does not refer to offences committed beyond the Company's territories [for which see Act I. 1849, paras. 208, *et seq.*] Reg. VIII. 1822, sect. 2. (a)

Government may order transfer.

203. The government may order the trial of any person charged with a criminal offence to be conducted in a different zillah from that in which the act was perpetrated; and both magistrates shall be bound, on the receipt of orders for the purpose, under the official signature of a secretary to government, to proceed to bring the party to trial at the place fixed therein, in the same manner as if the offence charged had been committed within that jurisdiction. Notice of every such order is to be immediately given to the nizamut adawlut and to the sessions court for the district within which it is intended that the trial should take place; and those courts are bound to proceed, as if the case had been brought on in its proper district. Reg. VIII. 1822, sect. 3, cl. 1.

Nizamut adawlut may alter the venue of a trial as regards the sessions.

204. The nizamut adawlut also may order a trial to be brought on at the station or jail delivery of any magistrate, other than that of the district within which the crime was perpetrated, whenever, either from the magistrate's representation, or other information, it appears to the court, on substantial grounds to be recorded on their proceedings, that such measures will promote the ends of justice, or tend to the general convenience of parties and witnesses without hindrance thereto. An order under the official signature of the register of the court is sufficient authority for the same. Reg. VIII. 1822, sect. 3. cl. 2.

Rule where venue is altered.

205. When a trial is so removed, or is ordered to be carried on in the district where the proceedings were instituted, instead of being transferred to that in which the crime was perpetrated, the magistrates are bound to conform to any instructions they may receive from the authority issuing the orders; and the trial held and sentence passed in consequence, shall be of the same legal effect, as if the whole had been conducted at the station of the district within which the crime was perpetrated. Reg. VIII. 1822, sect. 4.

Extra-regulation provinces.

206. The court would not sanction the transfer of a trial to a place, to which the regulations of government did not extend, and which therefore is not contemplated in the above enactment. Const. No. 474.

Disputed jurisdiction.

207. In a case of disputed possession, in which the plaintiff and defendant asserted different jurisdictions, it was held that either magistrate might take up the case, and proceed

(a) In general, all offences must be inquired into as well as tried in the county where the fact is committed. Yet if larceny be committed in one county, and the goods carried into another, the offender may be indicted in either; for the offence is complete in both. Or he may be indicted in England for larceny in Scotland, and carrying the goods with him into England, or vice versa; or for receiving in one part of the United Kingdom goods that have been stolen in another. But for robbery, burglary, and the like, he can only be indicted where the fact was actually committed; for though the carrying away and keeping of the goods is a continuation of the original taking, and is therefore larceny in the second country, yet it is not a robbery or burglary in that jurisdiction. *Blackstone, book 4, chapter 23.*

with the investigation; but that if, in the course of it, it should appear that the lands were situated in the other district, he should refer the parties to the other magistrate, and certify to that officer the proceedings held by him in the case. Const. No. 694.

208. An inhabitant of Lahore carried off a child without the knowledge of his parents, inhabitants of the same state, and settled in the British territories, in which he was accused by the parents, and proved to have committed the crime. Held, that the prisoner could not be tried in our courts for child-stealing, but might be committed on the minor charge of retaining in his possession a child knowing him to have been stolen.(a) Const. No. 1043.

Examples of doubtful jurisdiction.

209. A person was charged with enticing away a boy from Behar, and robbing and attempting to strangle him in Tirhoot. Held that the trial should take place in Tirhoot. N. A. R. vol. 2, page 205.

210. A person on a raft belonging to British subjects, floating down the boundary river, common to the British and a foreign territory, was killed by a shot fired by a person in the foreign territory. Held, that the river must be regarded as within the British dominion; and that the prisoners could be tried in our courts, as the place of the murder was not the place whence the shot was fired, but that at which it took effect. C. O. No. 24, December 8, 1855, *L. P.*

211. The appeal from the order of one magistrate, acting on the requisition of another, should be made to the appellate court to whom the former is subordinate. Const. No. 625.

Requisitions from one magistrate to another.

212. All subjects of the British government; and also all persons in the civil or military service of the said government, while actually in such service, and for 6 months afterwards; and also all persons who have dwelt for 6 months within the British territories under the government of the East India Company, subject to the laws of the said territories, who shall be apprehended within the said territories, or delivered into the custody of a magistrate within the said territories wherever apprehended; are to be amenable to the law for all offences committed by them within the territory of any foreign prince or state; and may be bailed or committed for trial, as hereafter provided, on the like evidence as would warrant their being held to bail or committed for the same offence, if it had been committed within the British territories. Act I. 1849, sect. 2.

Foreign territories.

What classes of persons are amenable to the law for offences committed in foreign territories.

213. The residence for six months within the British territories need not be for the period immediately preceding the commission of the offence under trial; but may refer to some former period, and the court held that a prisoner was amenable to the law, who had for 12 years possessed landed property within the British territories, and had been in the habit of making monthly visits to it, although he had no actual dwelling house in the village. Reports *W. P.* 1853, part 1, page 148.

(a) Persons accused of the receipt of stolen property may be tried in the district in which the property is found in his possession, or in which the theft occurred, or in which the receipt took place. Act XVI, 1851.

Every such case to be reported to government before trial.

214. The committing magistrate immediately, and before the trial, is to report every such case to the government, and is to obey the orders which he shall receive thereon. Act I. 1849, sect. 3.

Government may order the trial to be had before one of the established courts.

215. The government may order the trial to be had before one of the established courts of criminal judicature, which would be competent to try the person charged for the offence, if it had been committed within the British territories. Act I. 1849, sect. 4.

216. It is not sufficient that the previous sanction of government has been obtained to the trial of one of the prisoners. An application must be made to government for permission to try each prisoner who is subsequently arrested. Reports W. P. 1853, part 1, page 181.

If in such territory there is a competent court administered under the Company's government, the government may order the prisoner to be delivered to such court.

217. When the offence is charged to have been committed in the territory of any foreign prince or state, administered by officers acting under the authority of the East India Company, in which territory a court competent to try the person charged for the offence is established by authority of the governor-general of India in council, the government may order such person to be conveyed in custody out of the British territories for the purpose of delivering him up for trial before such court. Act I. 1849, sect. 5.

Forms of warrant and bail-bond to contain conditions regarding the orders of government.

218. When the person charged is committed, the form of warrant is to specify the commitment to be until the orders of government can be received and acted on; when he is bailed, the form of the bail-bond is to be, in the first instance, to appear before the magistrate on a certain day assigned, allowing reasonable time for receipt of the orders of government, and on such subsequent days as the magistrate from time to time shall require; and if government orders the person charged to be tried within that presidency, the magistrate may cause the bail-bond to be renewed in the usual form to appear and take his trial at the court appointed for the purpose. Act I. 1849, sect. 6.

The special order of government is sufficient authority for the trial.

219. In either case the special order of government is to be deemed full authority, either for the trial and punishment of the person charged within the British territories, or for conveying him in custody out of the British territories as aforesaid. Act I. 1849, sect. 7.

Record.

220. A copy of the magistrate's letter applying for sanction to proceed to trial, and the answer of government, are to be filed with the proceedings. C. O. No. 4 of vol. 2.

Meaning of the term "government."

221. The word "government" as used in the third and following sections of this Act means the governor or governor in council, or other person or persons having supreme executive authority in the presidency or place to which the committing magistrate belongs. Act I. 1849 sect. 8.

The authority of government may be delegated to a commissioner.

222. The authority hereinbefore given to the government may be also exercised by any commissioner or other person acting in the civil service of the East India Company, to whom the governor general in council shall have delegated authority to receive reports and give orders in cases within this Act. Act I. 1849, sect. 9.

Character cannot be divested.

223. A native born within the British territories is considered a native British subject, although he may have resided in a foreign territory for any number of years, Const. No. 703.

224. If persons, not being native British subjects, come from an independent state into the Company's territories, and, having committed robbery, or other heinous crime, escape beyond the boundary, such persons, if given up by the foreign state, can be tried by our courts. Const. No. 533, 1st query.

Foreigners committing offences within the British territories;

225. It would seem that the criminal courts have jurisdiction, although the prisoner has been illegally arrested in a foreign territory by persons in the employ of the British government. It is not necessary to the validity of the trial, that the foreign power should have given him up(a). Reports *W. P.* 1852, page 897.

226. If a person, not a British subject, accused of a crime committed within the Company's territories, be seized within those territories, he can be tried without reference to government. Const. No. 533, 3d query.

227. The Company's courts have no jurisdiction over offences committed by foreigners in a foreign territory. [For the measures to be pursued in such case, see Act VII. 1854, paras. 233 et seq:] N. A. R. vol. 3, pages 101, 218 and 220.

in a foreign territory.

228. A prisoner being an inhabitant of a foreign territory, and charged with an offence committed in that territory, was held not to be amenable to the Company's courts on the ground of his claiming landed property situated within the British territory, of which property however he never had possession. N. A. R. vol. 3, page 151.

229. A person, formerly an alien but coming within the provisions of section 2, Reg. IX. 1822* was forcibly carried off from a village in Bareilly by certain foreigners, and taken to a village situated within the foreign jagheer of Rampore. Seven native British subjects proceeded to the latter village for the purpose of peaceably obtaining his release; but while there, a dispute arose which terminated in an affray attended with murder. It was determined that the foreigners, who forcibly carried off the man from Bareilly, were liable to be tried by the magistrate of that district; and that, with regard to the subsequent affray, the native British subjects concerned therein were also liable to be tried by our courts, if the government, on a reference under Reg. V. 1809*, should think proper to direct such a measure;—but that the foreigners, engaged therein, were liable only to be tried by the laws of the state in which the offence was committed. Const. No. 926.

Example of the liability of native British subjects, and foreigners.

* These enactments have been rescinded by Act I. 1849, the provisions of which have been substituted for them.

230. It was decided that the Baiza Bae and her followers, when expelled from her own country, were amenable to the laws and regulations of our government, civil and criminal, while they resided within our territories. C. O. No. 195 of vol. 2.

(a) This principle was adopted by the nizamat adawlut in accordance with the ruling of the English courts, which was explained by the advocate general as resting on the following grounds: "First, admitting that the courts are bound to recognise the clear law of nations and not to encourage a violation of it, yet the arrest in a foreign country is not necessarily a violation of the law of nations (see Vattel, book 2, cap. 6); and a court of justice is not the proper tribunal to determine under such circumstances what is or what is not a violation of such law (see Lord Tentenden's judgment in *Esparte Scott*). Second, the objection is one which the party himself is not entitled, to take (as in *Esparte Scott*), for non constat that the government whose territory has been violated will complain, or that such country will not obtain sufficient redress otherwise. Third, if the arrest is a violation of the law of nations, it is in the power of the Government to direct their attorney general or other prosecuting officer to enter a *nolle prosequi*, or to relinquish the prosecution, and if the prisoner has been convicted, to release or even to pardon him."

Trial illegal if sanction of government not received.

231. Under the above regulations, the trials of native British subjects, accused of offences committed in a foreign territory, are illegal, if the permission of government to bring them to trial has not been previously obtained. N. A. R. vol. 2, pages 10 and 393.

A trial cannot be held in the extra-regulation provinces for an offence committed in a foreign state without the sanction of government.

232. The rule, that the proceedings on a trial for an offence committed in a foreign territory must be quashed unless the permission of government to bring the accused to trial has been obtained, is applicable to the extra-regulation provinces. N. A. R. vol. 6, page 79.

Mahomedan law.

233. By the Mahomedan law *moostamins* (i. e. persons residing in a foreign country) are justified in making reprisals, by any means in their power, on the sovereign of that country for sums due by himself or his subjects, if he refuse to give redress on a representation of the case. By the regulations quoted, such persons, if subjects of the Company, are liable to be tried and punished for any act of aggression, in like manner as if the offence had been committed within the Company's territories. N. A. R. vol. 1, page 360.

Precedents.

234. Four prisoners convicted of having forcibly carried off property belonging to the Raja of Cachar. *Sentence*, imprisonment and hard labour for seven years. N. A. R. vol. 1, page 360.

235. A prisoner convicted of murder in the Lucknow territory. *Sentence*, death. N. A. R. vol. 2, page 257.

Requisitions for surrender.

236. Our requisitions for the surrender of refugees, and our compliance with those of our neighbours, are to be confined to the cases of heinous offenders, such as murderers, highway robbers, &c., leaving the privilege of asylum inviolate as regards debtors, defaulters, and civil and petty offenders of every kind. And the practice should be strictly reciprocal. (a) *Orders of government in C. O. No. 194 of vol. 2.*

If requisition be made by the executive government of any part of Her Majesty's dominions; or by any foreign prince or state; to the Indian government for delivering up a person accused of a heinous offence, government may direct enquiry.

237. If, requisition be made by, or by the authority of, the person or persons for the time being administering the executive government of any part of the dominions of Her Majesty, to the government of any part of the British territories in India, to deliver up to justice any person accused of having been guilty of any heinous offence in any part of Her Majesty's dominions subject to the government making the requisition, and who shall be, or shall be supposed to be, in any part of the British territories in India subject to the

(a) "In demanding the surrender of criminals you will of course make the necessary distinctions between our own subjects and those of foreign states. If any of our own subjects fly the country after having been guilty of heinous crimes, we may justly demand their surrender to stand their trial in our courts; but, if excesses are committed upon our territory by subjects of foreign states who elude our pursuit by taking refuge in neighbouring independent jurisdictions, then our claim lies for the restoration of the stolen property or its value and indemnity for any loss or injury inflicted; and we may, at the same time call upon the state, whose subjects they are, or in whose territory they are residing, to inflict an adequate punishment upon the offenders. His Lordship considers it of importance that this distinction should be properly understood. The native states always show the greatest unwillingness to deliver over a subject of their own for trial before us; and, by making this the point of our demands, the offender often escapes with impunity, and the losses of our own subjects remain uncompensated: whereas, if we hold the native governments strictly responsible for the conduct of their subjects, we can always realize from them our claims for indemnity, and often oblige them to punish the criminals besides. If this rule is consistently acted upon, the native states will see their own interest in restraining their subjects from committing excesses in our provinces; and they will not be able to evade the responsibility attending such occurrences, as they too often do at present by their alleged inability to apprehend and make over the actual offender." *Government to Agent in the Saugor and Nerbudda territories, December 14th, 1832. See Reports W. P. 1852, page 897.*

government to which the requisition shall be made; or if a similar requisition be made by any foreign prince or state, or by any duly authorized minister or officer thereof, in respect of a person accused of having been guilty of any heinous offence in any part of the territories of such foreign prince or state: it shall be lawful for the government to which the requisition shall be made, if it shall see fit so to do, to issue an order in writing for enquiry into the truth of the charge; and such order shall be sufficient proof of the requisition having been duly made, and a sufficient justification for all acts done in pursuance thereof. Act VII. 1854, sect. 1.

238. The order shall be signed by one of the secretaries to the government; it shall be directed to all magistrates and justices of the peace of the presidency or place under the control of such government; it shall signify that the requisition has been made, shall state the nature of the offence charged, the name or other designation, if the name be not known, of the person accused, and any other description of him that may be thought necessary; and it shall require the magistrates and justices to whom it shall be directed or any of them to inquire into the truth of the charge, and to proceed in pursuance of this Act. Act VII. 1854, sect. 2.

Order for enquiry what to contain.

239. Upon the production of the order to any such magistrate or justice of the peace, he shall have the same powers as if the offence charged had been committed within his jurisdiction. Act VII. 1854, sect. 3.

The production of the order gives jurisdiction.

240. If the evidence adduced shall in the judgment of the magistrate or justice of the peace be sufficient to justify the apprehension of the person accused for the offence, the magistrate or justice of the peace shall issue his warrant for the apprehension of such person. The warrant shall be issued in the same manner as a warrant for an offence committed within the jurisdiction of the magistrate or justice of the peace issuing it, and shall contain a memorandum stating that the warrant is issued under this Act, and, if the warrant be issued under an order of government, shall also state the fact and specify the government. The memorandum may be to the following effect:—This warrant is issued under Act VII. 1854, and is issued under an order of the Government of —. Act VII. 1854, sect. 4.

After proof taken magistrate may issue warrant.

Warrant what to specify.

241. Upon the apprehension of the supposed offender, if the offence be charged to have been committed in any place not within the territories under the government of the East India Company, the person arrested shall be forthwith carried before a magistrate or justice of the peace of the zillah or district in which he shall be arrested. The magistrate or justice of the peace, before whom the supposed offender shall be carried in pursuance of the last mentioned directions, may proceed in the same manner as in cases in which he has power to commit for trial, or to hold to bail for an offence committed within his own jurisdiction. If, after making as full an inquiry into all the circumstances of the case as the evidence obtainable by the magistrate or justice of the peace within the territories under the government of the East India Company will enable him to make, the evidence adduced shall be sufficient in his judgment to warrant a committal, he shall commit the accused to some place of confinement within his zillah or district, which in the judgment of the magistrate or

Prisoner how to be disposed of, if offence committed beyond Company's territories.

Magistrate how to proceed:

may commit to jail;

justice of the peace shall be fit for receiving the prisoner; or if there be no such place, to the jail of the presidency, there to remain until he shall be delivered up or discharged by order of government: if after making such inquiry the circumstances shall not in the judgment of the magistrate or justice of the peace be sufficient to warrant either the committal or the holding to bail of the prisoner, he shall be discharged. Act VII. 1854, sect. 7.

Prisoner may be admitted to bail in bailable cases.

242. If the offence charged be one committed out of the British territories in India, which if committed within the jurisdiction of the magistrate would be bailable, the magistrate or justice of the peace may proceed accordingly, and may discharge the prisoner upon his giving the necessary bail. The recognizance or bail-bond in such case shall be for the appearance of the accused before the magistrate or justice of the peace for the time being of the zillah or district in which the recognizance shall be taken, on a certain day to be named therein, allowing reasonable time for receiving the orders of government, and on such subsequent days as the magistrate or justice of the peace for the time being shall from time to time appoint. Act VII. 1854, sect. 8.

Bail bond what to contain.

Government issuing warrant to send documents to government having jurisdiction over place of arrest.

243. If the warrant be issued under an order of government, and executed in a presidency or place not under the government issuing the order, notice of the arrest shall be forthwith communicated to such government, who shall forward the requisition and any documents relating thereto in their possession to the government having jurisdiction over the place of arrest, and such last-mentioned government shall have the same powers as the government who made the order. Act VII. 1854, sect. 9.

If the person was previously convicted, and escaped before execution of sentence, he may be committed without further proof.

244. If the person accused of the offence mentioned in any such order of government be proved to have been convicted and sentenced for the offence charged by a court of justice in any part of Her Majesty's dominions in which the offence is alleged to have been committed, and to have escaped before such sentence was carried into execution; the magistrate or justice of the peace, upon proof of such conviction and sentence, may issue a warrant for the apprehension of the person accused, and he may be arrested and committed in manner aforesaid without further proof, unless such person shall prove that the conviction or sentence has been reversed or annulled. Act VII. 1854, sect. 10.

If offence was committed beyond the Company's territories, magistrate may apply to government for permission to try.

245. If it appear to the magistrate or justice of the peace, before whom any prisoner shall be carried under this Act for an offence alleged to have been committed in any territories not under the government of the East India Company, that particular circumstances exist which render it advisable that the case should be investigated by the magistrate or justice of the peace of a zillah or district nearer to such territories, he shall forthwith report the case and the particular circumstances to the government, who shall order such magistrate or justice of the peace either to proceed with the case himself, or to send the case to be investigated by the magistrate or justice of the peace of any other district to be named by the government. In the latter case the prisoner shall be sent, or if the offence be bailable shall give bail, to appear before such last-mentioned magistrate or justice of the peace, who shall have power to deal with the case as if he had issued the warrant under which the prisoner shall be arrested, and all the depositions and documents shall be forwarded to such

magistrate or justice of the peace. The order of government shall be a sufficient justification for all persons acting in pursuance thereof. Act VII. 1854, sect. 11.

246. The government, by whom any order under section 1 of this Act shall be made, may, if they think fit so to do, direct that copies of any depositions or exhibits, which shall have been laid before them and shall have been certified to their satisfaction to be true copies of depositions or exhibits made or produced before a competent judicial officer of the territories in which the offence is alleged to have been committed, may be received in evidence of the criminality of the person accused, and such direction shall be sufficient authority for receiving the same in evidence. Act VII. 1854, sect. 12.

Government may direct that copies of depositions &c., taken in foreign territory be received in evidence.

247. The magistrate or justice of the peace, after committing the accused or holding him to bail as aforesaid, for any offence committed out of the territories under the government of the East India Company, shall forthwith report the result of his proceedings to the government to which he is subordinate, together with any remarks which he may deem necessary or proper to make upon the whole case. He shall also forward with such report a copy of all depositions and documents used before him. Act VII. 1854, sect. 13.

If offence committed beyond Company's territories magistrate arresting to report to government.

248. Upon receipt of the report, and after examining the case, the government may, by order in writing to be signed by the secretary to the government, order the accused either to be discharged, or to be held to bail to appear in such court or place and at such time or times as the government may think fit, or to be delivered up to some person authorised by the government or officer making the requisition to receive and take charge of him. In cases falling within the provisions of Act I. 1849,* the government may order the person accused to be tried under that Act. Act VII. 1854, sect. 14.

Government may order the prisoner to be given up;

or to be tried.

* v. para. 212.

249. If ordered to be delivered up, the person to whom the accused shall be ordered to be delivered shall not have the custody or charge of him so long as he shall remain in any part of the territories under the government of the East India Company; but the accused shall be conveyed in custody through such last-mentioned territories, towards the territories in which the offence shall be alleged to have been committed, in the same manner as a prisoner sent from the station of one district to that of another; and as soon as he shall have been conveyed to the frontiers of the territories under the government of the East India Company, he shall be delivered over to some person authorized by the government making the requisition to receive and take charge of him. If no such person shall attend to receive the prisoner, the latter shall be taken before the nearest magistrate, who may order him to be discharged out of custody, and may provide him with such means of returning to the place where he was apprehended, or so near thereto as he may desire, as such magistrate may think necessary and suitable to his station in life. Act VII. 1854, sect. 15.

Such prisoner to be delivered up on the frontier.

If no one takes delivery, nearest magistrate may release.

250. Any magistrate or justice of the peace acting under the provisions of this Act shall issue all necessary warrants, orders, and directions, for carrying this Act, and also any order made under it by the government, into effect, under his signature and seal, or seal of office, if he shall have a seal of office; and all magistrates and officers acting in pursuance of this Act shall have and exercise the same powers as if the offence charged had been

Magistrate to issue warrants, &c. and to have the same powers, as if the offence had been committed within his jurisdiction.

committed within the zillah or district subject to their jurisdiction; and in cases where the accused may have been held to bail, the magistrate may order the bail-bond to be renewed in such form as may be necessary to carry any order of government into effect; and, if such bail-bond shall not be renewed accordingly, may commit the person accused to prison for such period as may be necessary to carry such order into effect. Act VII. 1854, sect. 16.

Prisoner so arrested who escapes may be re-taken anywhere, as if for an offence committed where he is found.

251. In case any person arrested under this Act shall escape out of custody, he may be re-taken in any part of the territories under the government of the East India Company, in the same manner as if he had escaped from custody under process for an offence committed in that part of such territories in which he shall be found. Act VII. 1854, sect. 17.

If warrant be issued in any part of Her Majesty's dominions beyond the Company's territories, magistrate may act on its production and proceed without special order.

252. If a warrant be issued, in any part of Her Majesty's dominions not under the government of the East India Company, for the arrest of any person for any heinous offence alleged to have been committed therein, or for the arrest of any person for any heinous offence of which he may have been convicted by a court of competent jurisdiction in any such part of Her Majesty's dominions, any magistrate or justice of the peace within the territories under the government of the East India Company may, upon the production of such warrant and proof of the signature of the officer signing it, and of his authority to issue the same, and without any further proof and without any order of government, issue his warrant for the apprehension of the person accused; and after his apprehension may proceed to commit or hold him to bail in manner aforesaid, and to take such other proceedings as aforesaid as the case may require; but the person accused shall not be delivered over as aforesaid without an order of government. The government in such case shall have the same powers as if the proceedings had been taken in pursuance of an order of government issued under this Act. Act VII. 1854, sect. 18.

Powers of government in such case.

Persons accused of heinous offence beyond Company's territories may be apprehended by magistrate, if necessary, without order; but may not be delivered up, without order of government.

253. In cases in which the immediate apprehension within the British territories in India of any person accused of having committed any heinous offence mentioned in section 21 of this Act out of such territories shall, in the judgment of a magistrate or justice of the peace having jurisdiction in any part of such territories in which the person accused shall be found, be necessary for the ends of justice, the person accused may without an order of government be apprehended or proceeded against in the same manner as for an offence charged to have been committed in the place where the person accused shall be found; and after his apprehension he may be committed or held to bail in manner aforesaid, and such other proceedings as aforesaid may be taken as the case may require; but the person accused shall not be delivered up without an order of government. The government in such case shall have the same powers as if the proceedings had been taken in pursuance of an order of government issued under this Act. Act VII. 1854, sect. 19.

Powers of government.

If prisoner be not delivered up, discharged, or brought to trial within 2 months, he may be released after notice to government.

254. If any person imprisoned under this Act shall not either be delivered up or discharged or brought to trial within two calendar months after his committal, it shall be lawful for the principal court of original jurisdiction in criminal cases in the district in which he shall be imprisoned, upon application by or on behalf of the prisoner, to order him to be discharged out of custody, either upon giving such bail as the court may order, or without bail,

unless sufficient cause shall be shown to the court why such discharge ought not to be ordered. Provided that no such order shall be made until after notice of the application or of the intention to make the same shall have been given to government or to the secretary or one of the secretaries thereof. Act VII. 1854, sect. 20.

255. The words heinous offence in this Act shall be deemed to include treason against Her Majesty committed in any part of Her Majesty's dominions, murder, attempting to murder, rape, great personal violence, maiming, dacoity, thuggee, robbery, burglary, knowingly receiving property obtained by dacoity, robbery, or burglary, cattle-stealing, breaking and entering a dwelling-house and stealing therein, arson, setting fire to a village, house, or town, forgery or uttering forged documents, counterfeiting current coin, knowingly uttering base or counterfeit coin, perjury, subornation of perjury, embezzlement whether by public officers or other persons, and being an accessory to any of the above-mentioned offences. Act VII. 1854, sect. 21.

Term "heinous offence" what to include.

256. The said words heinous offence in this Act shall also be deemed to include any offence, for which by any treaty in force between Her Majesty or the East India Company, and any foreign prince or state, Her Majesty or the East India Company, shall, at the time of making any requisition as aforesaid, be bound to deliver up offenders to the foreign prince or state making the same; and any other offence which, in the judgment of the government to whom the requisition shall be made, shall be serious or aggravated, and for which the person accused cannot be tried within the territories under the government of the East India Company under the provisions of Act I. 1849. Act VII. 1854, sect. 22.

May include other offences.

257. If by any such treaty Her Majesty or the East India Company shall be bound to deliver up to any foreign prince or state any person liable to be proceeded against by the laws of such foreign prince or state, in any case not expressly provided for by this Act, or in any manner other than that provided by this Act, it shall be lawful for the government of any part of the territories under the government of the East India Company, in which such person may be found, upon requisition made by or on the part of such foreign prince or state, to adopt such proceedings for carrying such treaty into effect, and for the surrender of such person, and for making any preliminary inquiry into the charge contained in the requisition, as it shall think fit, and any such order of the government in writing, under the hand of one of the secretaries of such government, shall be a sufficient authority and justification for all acts to be done in execution thereof. Act VII. 1854, sect. 23.

If government be bound by treaty in any case not provided for by this Act, it may issue such orders as it thinks fit.

258. Unless where a contrary intention appears from the context, the word government, as used in this Act, shall be deemed to mean and include the governor general of India in council, or the person or persons administering the executive government in any presidency or place within the British territories in India. The words British territories in India shall include any part of the territories under the government of the East India Company. The word magistrate, as used in this Act, is intended to include a joint magistrate, or any person lawfully exercising the powers of a magistrate, and also a justice of the peace. Words in the singular number are intended to include the plural, and words in the masculine gender to include the feminine. Act VII. 1854, sect. 25.

Meaning of terms used in this Act.

Naturalization of aliens.

Any resident may ask to be naturalized.

259. Any person whilst actually residing in any part of the territories under the government of the East India Company may present a memorial to government, praying that the privileges of naturalization may be conferred upon him. Act XXX. 1852, sect. 1.

Particulars to be stated in his memorial.

260. Such memorial is to state to the best of the knowledge and belief of the memorialist, his age, place of birth, place of residence, profession, trade or occupation, the length of time during which he has resided within the said territories, that he is settled in the said territories, or is residing within the same with intent to settle therein, and any other particulars which the government may require to be stated therein; and such memorial shall be in writing and signed by the memorialist, and accompanied by an affidavit sworn by him, verifying the truth of the statements contained therein. Act XXX. 1852, sect. 2.

Government may require further evidence.

261. The memorial shall be considered by the government to whom it shall be presented, who shall inquire into the circumstances of the case, and may require such evidence either by affidavit or otherwise as they may deem proper, in addition to the before-mentioned affidavit of the memorialist, to prove the truth of the statements contained in such memorial. Act XXX. 1852, sect. 3. •

Government may issue certificate of naturalization.

262. The government may, if they shall think fit, issue a certificate in writing reciting such of the contents of the memorial as they may consider to be true and material, and granting to the memorialist all the rights, privileges, and capacities of naturalization under this Act, except such rights, privileges, or capacities, if any, as may be specially excepted in such certificate. Act XXX. 1852, sect. 4.

Copy of certificate to be filed in office appointed. List to be kept.

263. The certificate shall be delivered to the memorialist; and a copy or duplicate thereof, together with the memorial upon which the same shall be obtained, and any affidavit which may accompany such memorial or be produced in support thereof, shall be filed by the secretary to the government, or such other officer as the government may direct; and such secretary or officer shall keep an alphabetical list of all persons who may be naturalized by such government. Act XXX. 1852, sect. 5.

If memorial be false, certificate may be cancelled.

264. If any material statement contained in such memorial shall be false, the government may, if they think fit, by an order in writing, declare the certificate issued upon such memorial to be null and void to all intents and purposes, except such purposes, if any, as may be specially excepted in such order; and from and after such order all the rights, privileges and capacities derived through such certificate shall cease to exist. Act XXX. 1852, sect. 6.

Fees to be paid.

265. Such fees shall be payable in respect of the proceedings hereby authorized as shall be fixed by the government. Act XXX. 1852, sect. 7.

Privileges obtained by naturalization.

266. Upon obtaining such certificate, and taking and subscribing the oath as hereinafter prescribed, the memorialist shall, within the said territories under the government of the East India Company, be deemed a natural born subject of Her Majesty as if he had been born within the said territories; and shall be entitled within the said territories to all the rights, privileges, and capacities of a subject of Her Majesty born within the said territories,

except such rights, privileges, and capacities, if any, as may be specially excepted in such certificate. Act XXX. 1852, sect. 8.

267. Nothing in this Act contained is to be construed so as to deprive the courts of the East India Company of jurisdiction over any such naturalized person, or to give to the courts of Her Majesty any jurisdiction over any such person not otherwise subject to such jurisdiction. Act XXX. 1852, sect. 9.

Restriction of privileges.

268. Within sixty days from the day of the date of such certificate the memorialist named in such certificate shall take and subscribe the oath contained in the schedule annexed to this Act. Act XXX. 1852, sect. 10.

Oath to be taken,

269. Such oath, as well as any other oath or affidavit required by this Act, may be administered by any magistrate or justice of the peace within the limits of his jurisdiction, or by any other person to be appointed for that purpose by government, and the person who shall administer the oath mentioned in the schedule to this Act annexed shall grant to the memorialist a certificate in writing of his having taken and subscribed such oath, and of the date of his taking and subscribing the same, and shall forward to the government the oath so taken and subscribed together with a duplicate of such certificate, which oath and duplicate certificate shall be filed and kept with the memorial. Act XXX. 1852, sect. 11.

before a magistrate or justice of the peace or other person appointed.

270. The word government in this Act shall be deemed to mean the person or persons for the time being lawfully entitled to administer the executive government in that part of the said territories in which the memorialist shall reside at the time of presenting such memorial. The word magistrate shall include any person lawfully exercising the powers of a magistrate; and words denoting the masculine gender shall include the feminine. Act XXX. 1852, sect. 12.

Meaning of terms used in this Act.

271. In every case in which the word oath or affidavit is used in this Act, an affirmation to the same effect as the oath or affidavit required shall be sufficient in cases where the person required to make such oath or affidavit shall be a person allowed by law to affirm in civil cases; and in every such case such affirmation shall be made before the person authorized to administer the oath, and the word oath or affidavit wherever used in this Act shall include such affirmation. Act XXX. 1852, sect. 13.

Affirmation sufficient in certain cases in lieu of an oath.

272. I, A. B., of (*here state the description of the party*) do swear (*or, being one of the persons allowed by law to affirm in civil cases, do affirm,*) that I will be faithful and bear true allegiance to the Sovereign of the United Kingdom of Great Britain and Ireland, and of these Territories as dependent thereon, and that I will be true and faithful to the East India Company. Act XXX. 1852, schedule.

Form of oath.

SECTION II.

OF JURISDICTION IN MILITARY CANTONMENTS, AND OF OFFENCES
COMMITTED BY PERSONS ATTACHED TO THE ARMY.**Canton-
ments.****Limits of.****Persons residing
in.****Land belonging
to government.****Police in sudder
bazar.****Police in bazars
of corps.****Retainers and
dependants of ar-
my subject to lo-
cal regulations of
cantonment, &c.,
and liable to court
martial for breach
thereof.**

273. By sections 4 and 5, Regulation III. 1809, it was ordered, that the limits of cantonments, including the military bazars attached thereto, at which any division or corps of the army, or any considerable detachment of troops not being less than half a battalion, were quartered, should be fixed by the commanding officer in concert with the magistrate. This rule applied to all cantonments whether situated at the place of residence of the magistrate, or in any other part of the district. Sections 5 and 6, Regulation XX. 1810, repeated and re-enacted these orders, and required plans of the cantonments and bazars to be prepared in quadruplicate, and one copy to be deposited in the cutcherry of the magistrate, and another at the head-quarters of the station. The same regulation also required (vide sections 7, 8, 9, 10, and 26) that the names of persons trading for the supply of the troops in the station bazars, and bazars of corps, should be registered; but the registry was to be with their own consent; and no person was liable to be dispossessed by commanding officers of land or houses, situated within the bazars, although he should refuse to be registered, or be discharged from the registry.

274. A magistrate is not competent, under the provisions of Regulation XX. 1810, to pull down houses in a military cantonment, and eject their possessors, merely on the requisition of the officer commanding the station. Const. No. 1119.

275. Where land within a military cantonment is the property of government, it rests entirely with the officers commanding to give directions regarding its disposal. Reports, *L. P.* 1852, part 1, page 679.

276. The support of the police, and the maintenance of the peace within the limits of the cantonments and military bazars, are vested in the commanding officers; who are required to adopt measures, by means of the troops, for preventing the commission of crimes within such limits, and for the apprehension of persons guilty of such acts. Reg. III. 1809, sect. 2, cl. 1.

277. The charge of the police, over persons registered as attached to bazars of corps, is vested in the commanding officers of such corps, so long as such persons are *bonâ fide* carrying on the occupation in respect of which they are so registered. Reg. XX. 1810, sect. 21.

278. All persons serving with any part of the army, and receiving public pay drawn by any officer in charge of a public department appertaining to the army, whether lascars, magazine men, kalassies attached to magazines or any other department or establishment, native doctors, writers, bhisteas, puckallies, syces, grass-cutters, mahouts, surwans, or other subordinate servants attached to public cattle, bildars, artificers, or in any other capacity, are (provided they are borne upon the fixed establishment of the department in which they are

employed, and not otherwise) subject to be tried by a court martial for all breaches of duty and for all disorders and neglects to the prejudice of good order and of the local regulations established by the commanding officer. Reg. XX. 1810, sect. 2.

279. Menial servants of officers within the precincts of any cantonment, garrison, military station, or military bazar, although not in the receipt of public pay, are subject to the local regulations of such cantonment, &c.; and are liable to be tried by court martial for any breach thereof. Reg. XX. 1810, sect. 4.

Menial servants
of officers ditto.

280. Persons registered as attached to the station bazar, or the bazar of a corps, are subject, while so attached, to the local regulations of such bazar; and are liable to be tried by court martial for any breach thereof. Reg. XX. 1810, sects. 8 and 12.

Persons register-
ed in bazars ditto.

281. If any retainer of the army, of the description mentioned in section 2 of this regulation, or any menial servant of an officer, or any person registered as attached to the sudder or station bazar, is charged with the commission of an inconsiderable assault or affray, or other act immediately tending to a breach of the peace and good order of any garrison, cantonment, or bazar, within the limits thereof, as described in the plans mentioned above,—he is to be tried by a native court martial. Reg. XX. 1810, sect. 15.

**Offences
committed
within can-
tonments.**

Retainers, menial
servants of officers,
and persons regis-
tered in bazars,
liable to court
martial for petty
assaults, &c.

Ditto for petty
thefts.

282. If any such person is charged with having committed a petty theft (i. e. theft without violence and outrage, and not exceeding 100 rupees) within the limits of the cantonment or bazar, such charge is to be tried by a native court martial. Reg. XX. 1810, sect. 16.

283. If any such petty offence is committed within such limits by any person not being such retainer of the army, or the menial servant of an officer, or registered as attached to the bazar, the commanding officer is to cause the offender, if found within such limits, to be arrested and sent to the magistrate, who is to inquire into the facts, and punish the offender, in the same manner as in other cases of petty offences cognizable by the magistrate under existing regulations. Reg. XX. 1810, sect. 17.

Any other person
committing such
offence to be made
over to magistrate.

284. In all cases of crimes committed within the limits of garrisons, cantonments, or military bazars, which are not cognizable before a court martial in the manner described above, the offender, whatever be his description, if found within the limits, is to be arrested by the commanding officer, and delivered over to the magistrate. Reg. XX. 1810, sect. 18. Reg. III. 1809, sect. 2, cl. 3.

In the case of all
other crimes every
offender to be made
over to magistrate.

285. The same rules apply to all such petty offences, committed by persons attached to the bazars of corps: provided that when such offences are committed at the distance of above one coss from the stations of the corps or from its actual position on a march, and the offender is taken in the fact, the magistrate has a concurrent jurisdiction, and may proceed against the offender as in other cases, or, at his discretion, remit him to the commanding officer to be tried by court martial. Reg. XX. 1810, sect. 21.

286. By the above rules the military authority in cantonments extends only to petty offences committed within the limits of a cantonment by a person, who is a retainer of the army, the servant of an officer, or registered as attached to the bazar; the more grievous offences are cognizable by the magistrate exclusively, by whomsoever perpetrated, whether within or without the limits of the cantonment. Const. No. 392.

**Limits of
military and
civil jurisdic-
tion.**

Construction of
the above rules.

Example. 287. A sepoy belonging to a detachment at Buxar, having shot and killed a havildar, while mounting guard at the fort gate, held that the case was cognizable by the civil authorities. Const. No. 760.

Offences not military committed by native officers and soldiers. 288. In all places within the jurisdiction of any civil judicature, (native) officers and soldiers accused of capital crimes, or of violence, or of offences against person or property, punishable by such civil judicature, are to be delivered over to a magistrate to be proceeded against according to law. And all officers and soldiers are required to assist the officers of justice in apprehending and securing any person so accused. Act XX. 1845, article 111.

Military offences committed by military guards in charge of convicts. 289. The provisions of the regulations which regard guards guilty of neglect of duty, are not applicable to military guards from provincial battalions, or from any regular corps of the army. If any such guard is guilty of wilful neglect in guarding the prisoners under his charge, or of connivance at the escape of a prisoner, or of any other act of a criminal nature in the discharge of his duty, the magistrate is to deliver him over to his commanding officer with a charge in writing, that he may be tried by a court martial. *Beng. Ben. Reg. XI. 1806, sect. 10, cl. 2. Ced. Prov. Reg. VIII. 1805, sect. 14, cl. 5.*

Application and restriction of the above rule. 290. The above rule is to be observed, with respect to any other offence involving a breach of military duty, and properly cognizable by courts martial;—but does not apply to any criminal charge against such guards or other sepoys, which does not involve a breach of military duty, and the cognizance of which therefore appertains to the civil courts. *Beng. Ben. Reg. XI. 1806, sect. 10, cl. 3. Ced. Prov. Reg. VIII. 1805, sect. 14, cl. 6.*

Rule, when case is made over to the magistrate. 291. The commanding officer of a military cantonment, when required to make over the offender to the magistrate, is not competent to take the information of the prosecutor and witnesses on oath. Const. No. 1044.

Jurisdiction of magistrate in cantonments. 292. Any person, having a charge or complaint to prefer against any individual resident in any cantonment or military bazar, who has not been already apprehended by the persons entrusted therein with the support of the police, or if the charge or complaint is of a nature not to authorize those officers, under the above rules to interfere in it,—may prefer his complaint directly to the magistrate, who is required to proceed with respect to it, under the general regulations, in the same manner as if the offence had been committed in any other part of his jurisdiction. Reg. III. 1809, sect. 3, cl. 1.

Power of civil authorities to serve processes in military stations. 293. Under the foregoing clause the magistrates are of course empowered to issue their warrants and summonses against any persons residing in the cantonments and military bazars, in the same manner as if such persons resided in any other part of their jurisdiction;—and the commanding officers are required to afford every protection to the officers of the civil authorities in the discharge of the duty entrusted to them, whether any special application has been made to them for such aid or support, or otherwise. Reg. III. 1809, sect. 3, cl. 2.

Arrest. 294. In all cases in which it is necessary to execute any process of arrest, criminal or civil, within the limits of a garrison, cantonment, military station, or military bazar, (the process of the supreme court only excepted) the officers entrusted with the execution of such

process of arrest are in the first instance to carry it to the commanding officer, or in his absence to the senior officer actually present: and such officer, upon such process being produced to him, is to back the same with his signature, and is forthwith to use his utmost endeavours to cause the person named in such process to be discovered, and, if within the limits of the garrison &c., to be arrested and delivered to the civil officer. But the above does not prevent the service by the civil officer, in the usual way, of summonses, subpoenas, or other process of mere citation without arrest. Reg. XX. 1810, sect. 19.

Processes short of arrest.

295. If within any military cantonment, or within any limits around the same to which the provisions of this Act shall be extended by an order of government to be publicly notified, any person not amenable to articles of war, or any sutler or camp follower, shall knowingly barter, sell, or supply, or offer or attempt to barter, sell, or supply, any spirituous liquor, wine, or intoxicating drug, to or for the use of any European soldier, or to or for the use of any European or Eurasian being a camp follower, or a soldiers' wife, without a written license from the officer commanding at the station, or from some person having sufficient authority from the commanding officer to grant such license, the person so bartering, selling, or supplying, or offering or attempting to barter, sell, or supply, such spirituous liquor, wine, or intoxicating drug as aforesaid, shall be liable, on conviction before a magistrate, to a fine not exceeding fifty rupees, or in the discretion of the magistrate to imprisonment, with or without hard labour, for any period not exceeding one calendar month. Act XVIII. 1853, sect. 1.

Sale of spirits in cantonments.

Any person not amenable to articles of war, or camp follower, selling &c., spirits, &c., without licence, to or for the use of soldiers in cantonments liable to fine or imprisonment.

296. If any person convicted of an offence under section 1 of this Act, shall be convicted under that section of an offence subsequently committed, he shall be liable to a fine not exceeding one hundred rupees, or to imprisonment, with or without hard labour, for any period not exceeding three calendar months; and in such case any spirituous liquor, wine, or intoxicating drug, within such cantonment, or limits, which at the time of the commission of such subsequent offence shall belong to, or be in the possession of such person, shall without further proof, be deemed to be in the possession of such person for the purpose of being supplied to European soldiers contrary to the provisions of this Act, and shall be liable to be seized and confiscated. Act XVIII. 1853, sect. 2.

In the case of a second conviction, liable to increased fine or imprisonment, and spirits may be confiscated.

297. If any camp follower, or military pensioner, or the wife or widow of any soldier, camp follower, or military pensioner, shall within such cantonment or limits remove, convey, or have in his or her possession, any quantity of spirituous liquor, or wine exceeding one seer or quart, without a permit, to be signed by the officer in command, or such other officer as may be appointed by him to grant permits under this Act; every such person shall be liable upon conviction to a fine not exceeding fifty rupees, and for any subsequent offence to a fine not exceeding one hundred rupees, or to imprisonment, with or without hard labour, for any term not exceeding three calendar months. Act XVIII. 1853, sect. 3.

Camp followers &c., having, &c., more than one seer in cantonment, liable to punishment.

298. Section 3 of this Act shall not apply to any liquor brought into a cantonment for the private use of any commissioned officer. Act XVIII. 1853, sect. 4.

Commissioned officers may keep.

299. If any person, subject to the provisions of this Act, shall be found committing any offence contrary thereto, any police officer, authorized under this Act, may immediately,

Police may arrest without warrant, and convey before magistrate.

without warrant, arrest such person, and also seize any spirituous liquor, wine, or intoxicating drug, together with any vessel containing the same, and any thing used for the purpose of removing, conveying, or concealing the same, which may be found in his possession; and shall thereupon, without delay, take such person, together with the things so seized, before a magistrate or other officer having jurisdiction to punish the offender. Act XVIII. 1853, sect. 5.

Persons obstructing police, how punishable.

300. Any person, who shall obstruct any police officer in making any arrest, or seizure, under this Act, and any police officer, who shall not, without unreasonable delay, take the person, or thing, so arrested or seized, before a magistrate, or other officer having jurisdiction to punish the offence, shall be liable, on conviction before a magistrate, to a fine not exceeding one hundred rupees. Act XVIII. 1853, sect. 6.

Police arresting without probable cause.

301. Any police officer, who, under color of this Act, shall, without probable cause, make any arrest or seizure, without a warrant, shall on conviction before a magistrate, be liable, to a fine not exceeding one hundred rupees, which fine or any part of it may be ordered by the magistrate to be paid to the person aggrieved. Act XVIII. 1856, sect. 7.

Police must have general or special authority from commanding officer.

302. No police officer shall be competent to act under the provisions of section 5 of this Act, unless he shall have a general, or special authority so to do, granted to him in writing by the commanding officer or other officer empowered by him to grant the same, or by the officer in the immediate charge of the police. Act XVIII. 1853, sect. 8.

Magistrate may confiscate liquors, &c., and vessels, &c.

303. In case of a conviction for any offence under this Act, the convicting magistrate may adjudge any liquor, wine, or intoxicating drug, in respect of which the party shall be convicted, and any other spirituous liquor, wine, or intoxicating drug, which shall be found in his possession at the time of committing the offence, and any vessel containing the same, together with any thing used for the purpose of conveying, removing, or concealing the same, or any part thereof, to be confiscated; and such magistrate may order the whole, or any part, or parts of any fine imposed under this Act, to be paid, as soon as the same shall be realized, to the person upon whose information such conviction shall take place, or to the officer who shall have apprehended the offender, or seized any of the goods adjudged to be confiscated. Act XVIII. 1853, sect. 9.

Fines under this law may be given to informer, or officer seizing.

Anything seized may be detained until final decision. If acquitted, things to be restored.

304. A magistrate may order any thing seized under the provisions of this Act, in respect of which any person shall be charged with an offence, to be detained until the person in whose possession the same shall have been seized shall be convicted, or acquitted of the offence charged. If the person shall be acquitted, the things so seized shall be restored: if he shall be convicted, such of the things only, if any, as shall not be adjudged by a magistrate to be confiscated, shall be restored; the remainder shall be dealt with as confiscated. Act XVIII. 1853, sect. 10.

305. No appeal shall lie from any order or conviction under the provisions of this Act. Act XVIII. 1853, sect. 11.

European British subjects.

306. European British subjects shall be amenable to the jurisdiction of a magistrate for any offence against the provisions of this Act. Act XVIII. 1853, sect. 12.

307. This Act shall not apply to the sale, or supply of any article for medicinal purposes, by recognized medical practitioners, chemists, or druggists. Act XVIII. 1853, sect. 14.

Not to apply to things used for medicinal purposes.

308. In the construction of this Act the word cantonment shall include a fortress, or garrison, or military bazar station; the word soldier shall include any non-commissioned officer; the word magistrate shall include a joint magistrate, or any person lawfully exercising the powers of a magistrate, or a justice of the peace; the words spirituous liquor shall include toddy in a state of fermentation, or after it has been fermented. Words in the singular number shall include the plural, and words denoting the masculine gender shall include the feminine. Act XVIII. 1853, sect. 15.

Meaning of terms used.

309. This Act shall not come into operation before the 1st day of January 1854, and shall not take effect within any limits around a cantonment, which shall be specified in any order of government, before the expiration of one month from the date of the notification of such order: and any order for extending the provisions of this Act to any limits around a cantonment may from time to time be varied, altered, or suspended by government. Act XVIII. 1853, sect. 16.

Act not to take effect within one month from date of order: order may be altered by Govt.

310. Whenever a witness in attendance before a general court martial or other military court (for the trial of European British subjects) duly authorized to administer an oath, refuses to be sworn, and the court is of opinion that the testimony of such witness is essential, and that there is no sufficient reason to exempt him from taking the oath, the judge advocate general, or other officer conducting the proceedings of the court, is authorized to forward such witness with a written statement to the magistrate, within whose jurisdiction the court is held;—and the magistrate is to make such enquiries into the case as may satisfy him, that the witness ought or ought not to be exempted from taking an oath under the provisions of Reg. L. 1803. In the latter case, he is to proceed in the same manner as if the refusal to give evidence on oath had taken place in his own court;—in the former, he is to certify the same to the judge advocate general, or other officer above referred to, and is not to impose any penalty on such witness. Reg. XX. 1825, sect. 4.

Military Courts.

Witness refusing to be sworn before a court martial for the trial of European British subjects.

311. Any person not amenable to the articles of war (for the native army), who, having been summoned upon any court martial, refuses or neglects to attend, or who attending refuses to be sworn, or to make affirmation, or to answer any lawful question, or gives such testimony as, if given in a criminal court, would render him guilty of perjury, or who induces any other person so to offend, is to be delivered to a magistrate to be proceeded against according to law. Act XX. 1845, article 62.

Witness refusing to attend, or to be sworn, or committing perjury, before a court martial for the trial of natives.

312. Witnesses omitting to attend (courts of requests for the native army), refusing to give evidence, or committing perjury, and persons suborning witnesses to commit perjury, are to be tried and punished, if not amenable to articles of war, in the nearest of the Company's courts for the administration of criminal justice (whether such court have ordinarily jurisdiction over such person in criminal matters or not), in like manner as if such offence had been committed in regard to any trial before such nearest court. Act XI. 1841, sect. 6.

Ditto before a court of requests for the native army.

Contempt of court martial for trial of a native officer or soldier.

313. Any person using menacing or disrespectful words, signs, or gestures, in the presence of a court martial (held on a native officer or soldier) then sitting, or causing any disturbance or riot, so as to disturb their proceedings,—if not amenable to the articles of war (for the native army), is to be delivered over to a magistrate to be proceeded against according to law. Act XX. 1845, article 63.

Ditto of court of requests for the native army.

314. Any person, civil or military, European or native, using menacing words, signs, or gestures, or otherwise interrupting (whether being personally present or not) the proceedings of any military court of requests (for the native army), is punishable, if not amenable to articles of war, in the nearest of the Company's courts for the administration of criminal justice (whether such court have ordinarily jurisdiction over such person in criminal matters or not), in like manner as if the offence had been committed in regard to any proceeding of the court to which it is so referred. Act XI. 1841, sect. 7.

Magistrates required to give effect to sentences of military tribunals.

315. A magistrate is competent to give effect to the sentence of a general court martial, adjudging imprisonment with labor among the convicts of the civil power, on the offender being delivered into his custody, and the sentence being certified to him for the purpose of his giving it effect by the judge advocate general, or his deputy, under the authority of the commander-in-chief; and the sentence so certified is the magistrate's warrant and authority for carrying it into effect according to the terms of it. Reg. IV. 1820, sect. 2.

316. Whenever, under Act XXIII. 1839, (a) any sentence of a court martial adjudges imprisonment, or imprisonment with labor, for any offence, it is the duty of every judge, magistrate, sheriff, or other officer in charge of any jail, to give effect to such sentence on the offender being delivered into his custody, and on being furnished with a copy of the sentence by the officer commanding the division, garrison, regiment, or detachment, to which the offender belongs. Act II. 1840.

317. Whenever a court martial adjudges imprisonment with labor, or with solitary confinement, or both, or whenever the sentence of such court is commuted to any such imprisonment, it is the duty of every judge, magistrate, sheriff, or other officer in charge of a jail, to give effect to such sentence, on the offender being delivered into his custody, and on being furnished with a copy of the sentence by the officer commanding the division, field-force, district, or brigade, within which the trial is held. Act XX. 1845, article 81.

But not to act without warrant of commitment in prescribed form.

318. Officers in charge of jails are not to receive into custody any man, who may be sentenced to imprisonment by court martial, unless accompanied by the proper warrant of commitment, as prescribed by general orders, March 3, 1853, and a descriptive roll of the prisoner. (b) C. O. Govt. Bengal, No. 16, Dec. 6, 1854.

(a) This Act empowers courts martial in certain cases to sentence soldiers of the native army of the Company to imprisonment with or without hard labor for two years, if a general court martial, or one year if a garrison or hue court martial, or six months if a regimental or detachmental court martial.

(b) With reference to the 2nd paragraph of the 84th Article of War for the native troops, the commander-in-chief is pleased to direct, that when a soldier of the native army shall be delivered over to the civil power to undergo imprisonment with hard labor, there shall be sent with him, in addition to a descriptive roll containing a statement of any

319. A person who has been tried for any offence by a court martial, under the authority of the articles of war, cannot be tried for the same in any other court whatever. Act XX. 1845, article 151.

A person tried by court martial not liable to civil courts.

320. The commander-in-chief of the military forces in the service of the East India Company in each presidency shall have power to pardon any person belonging to the said forces, convicted by sentence of a court martial of any offence against the articles of war framed for the government of the native officers and soldiers in the military service of the East India Company, which, wherever committed, is not punishable otherwise than by sentence of a court martial; or, instead of granting a full pardon to any such person, may remit any part of the punishment awarded for such offence. Act VI. 1850, sect. 1.

Commander-in-chief may pardon military convicts, or remit part of sentence, in certain cases.

321. In such cases, the commander-in-chief shall issue a warrant under his hand setting forth the offence, and a copy of the warrant, or other instrument, by which the offender is kept in custody in execution of the sentence, and pardoning or remitting such part of the punishment awarded for the offence as to him shall seem fit. Act VI. 1850, sect. 2.

Warrant to be issued,

322. The said warrant shall be countersigned by the magistrate of the zillah, or city, in which the offender is undergoing his sentence; or, if he is confined in any prison belonging to one of the supreme courts of judicature established by royal charter, shall be countersigned by a judge of such court, if it shall appear to such magistrate or judge that the offence, wherever committed, is not punishable by any authority other than that of a court martial; but not otherwise. Act VI. 1850, sect. 3.

and countersigned by magistrate or judge, if offence be punishable only by court martial.

indelible mark upon his person and any other matter tending to his proper identification, a warrant of commitment made out in the following form :—

To the Magistrate, or other Officer in charge of the Jail at ———

Whereas at a ——— Court Martial held at ——— on the ——— day of—

185 ——— Sepoy* of the ——— Regiment of Native† Infantry was convicted of ———‡; and whereas the said ——— Court Martial on the ——— day of ——— 185 , passed the following sentence upon the said ———, that is to say, ——— (sentence to be entered in full but without signature):

And whereas the said sentence has been duly confirmed§ by ——— commanding ———, and the said ——— is herewith transmitted to you to undergo the same :

Now these are to require and authorize you to receive the said ——— into your custody, and to inflict upon him the said sentence of imprisonment with hard labor for ———, reckoned from ——— the day on which the said sentence was passed.

Given under my hand at ——— this ——— day of ——— 185 .

To be signed by the confirming officer of a regimental, detachental, or line court martial, or by the assistant adjutant general of the division, or the brigade major of the station, or the commanding officer of the regiment, if the trial has been by general or district court martial.

* Or trooper, or private, or as the case may be.

† Or light cavalry, or artillery, or as the case may be.

‡ The offence to be briefly stated here as desertion, theft, receiving stolen goods, fraud, disobedience of lawful command, or as the case may be.

§ If there is any mitigation of the sentence, such mitigation must be noticed thus, " to the extent of ——— ."

General Orders of the Commander-in-Chief, March 3, 1853.

Officer in charge of jail to give effect to warrant.

323. All sheriffs, jailors, and other persons, having custody of any offender under sentence of a court martial, shall obey and give effect to any warrant of the commander-in-chief, countersigned by a magistrate, or judge of the supreme court, as aforesaid, for the pardon and release of any offender in their custody respectively, or for the remission of any part of his sentence. Act VI. 1850, sect. 4.

Trial of European British subjects attached to the army.

Such persons, when apprehended by magistrate on criminal charges, to be delivered to commanding officer.

324. If an European British subject, apprehended by or brought before a magistrate on a charge of murder, rape, robbery, theft, or other criminal offence, is found to have been, at the time when the offence was committed, a commissioned, or non-commissioned officer, or soldier, serving with any body of troops in the service of Her Majesty, or of the Company, at any place not within the territories subject to the presidency of Fort William, or at any place within such territories which is situated above 120 miles from the aforesaid presidency, —or to have been, when the offence was committed, a person attached to such body of troops in any of the capacities specified in sections 45 and 60 of statute 4, George IV. cap. 81 (a),— it is the duty of the magistrate, instead of proceeding to hear evidence to the charge, to deliver over such person so charged, together with a statement of the charge, to the commanding officer of the regiment, corps, or detachment, to which such person belongs, or to the commanding officer of the nearest military station, for the purpose of his being brought to trial before a court martial under the provisions of the said act of parliament: Reg. XX. 1825, sect. 2, cl. 1.

Magistrate to assist in apprehending all such persons amenable to trial by court martial.

325. It is the duty of the magistrate, on a written application being made to him for that purpose by the commanding officer of any regiment, corps, or detachment, stationed or employed as specified in the preceding clause, to use his utmost endeavour for the apprehension of any British officer, non-commissioned officer, soldier, or other person of the description therein alluded to, who is charged with the crime of murder, rape, robbery, theft, or other criminal offence; and also to give his assistance, and that of the officers under his control, in securing the person so accused. Reg. XX. 1825, sect. 2, cl. 2.

Processes for the attendance of witnesses before courts martial to be enforced by the magistrate.

326. The judge advocate general, or deputy judge advocate, or other person appointed to conduct the proceedings of any court martial, assembled for the trial of offences under the said act of parliament, is competent to transmit to the magistrate, within whose jurisdiction persons whose attendance is required may reside, any warrant, summons, or other process for the attendance of such person;—and it is the duty of the magistrate to give his assistance, and that of the officers under him, in the execution of such process, and generally to aid and assist in the execution of all processes issued by such courts martial. Reg. XX. 1825, sect. 2, cl. 3.

(a) The following are the persons enumerated in the two sections quoted : all officers and persons serving and hired to be employed in the artillery, and in the several trains of artillery, and in the department of the engineers, and in the corps of engineers, and as military surveyors or draftsmen, or in the corps of sappers and miners, or pioneers, and all persons under the ordnance, and all apothecaries, veterinary surgeons, medical storekeepers, hospital stewards, and others serving on the medical establishment of the army, licensed sutlers and followers :—all officers and persons commissioned or employed in the commissariat department, or as storekeepers, and all civil officers under the ordnance, and all placed under the command of any general or other officer.

327. Magistrates are prohibited from receiving, and inquiring into any criminal charge of the nature described in sect. 2 of statute 4 George IV., cap. 81(a), which is preferred to them against any British commissioned or non-commissioned officer, soldier, or other person attached to the army, who has been regularly brought to trial under the provisions of the said Act, and acquitted or convicted by the sentence of a court martial of such offence: provided however that when it is ascertained by the magistrate, on due inquiry, that any person accused of such offence, and subject to court martial, has not been brought to trial for such offence before a court martial, and that no effectual proceedings have been taken, or have been ordered to be taken, against him, then it is the duty of the magistrate to report the circumstance for the information and orders of the governor-general in council; who may direct the case to be proceeded upon in the ordinary course of law; and the magistrate, if so authorized, is competent to proceed against the offender under the provisions of the regulations. Reg. XX. 1825, sect. 2, cl. 4.

Magistrate not to inquire into charges against such persons unless the military authorities neglect to bring them to trial;—in which case he is to report to government.

328. But magistrates are not restricted by the above rules, either in their ordinary capacity of magistrates, or as justices of the peace, from proceeding against all British subjects, charged with criminal offences, who are not attached to the army, or subject to be tried for such offences by a court martial. Reg. XX. 1825, sect. 2, cl. 5.

These rules do not apply to British subjects not attached to the army;

329. The above rules, as far as they relate to criminal offences committed by persons attached to the army, being British subjects, are not to be held to apply or to be in force, when such offences are committed by such persons attached to any body of troops stationed in the garrison of Fort William, or at Barrackpore, Midnapore, Dum-Dum, or at any other place within the territories under the presidency of Fort William, not situated at a greater distance than 120 miles from the said presidency. In all such places, the powers and authorities vested by law in the magistrates and justices of the peace are in full force and effect. Reg. XX. 1825, sect. 2, cl. 6.(b)

nor to British subjects attached to the army, if the offence is committed within 120 miles of the presidency.

(a) The criminal acts described in the section quoted are,—wilful murder, theft, robbery, rape, or any other crime which is capital by the laws of England, or using violence, or committing any offence against the person or property of any subject of his Majesty, or any other person entitled to his Majesty's protection, or to the protection of the respective governments of the East India Company, or any state in alliance with the said Company, within the territories of any foreign state, or in any country under the protection of his Majesty or the said Company, or at any place in the territories under the government of the said Company situated above 120 miles from the said presidencies respectively.

(b) A limit to the jurisdiction of courts martial is distinctly marked in the rules quoted above, and it would seem easy to assign to each case its specific class; but in fact many cases arise, in which it is as difficult to distinguish the legal as the most expedient jurisdiction. It is doubtless impossible to provide against all contingencies; offences which cannot be strictly called military, may yet partake so much of their nature, that no punishment could be adjudged on adequate grounds under the civil code. *Capt. Simmons*, in his work on the practice of courts martial, says: "The general jurisdiction of courts martial extends to the trial of the persons, and for the offences, declared under the power of the mutiny act, whether they be committed at home or abroad; and also, in default of a competent court of civil judicature, to the trial of military persons for all offences against the municipal law of the land; for which civil offences they would not otherwise be amenable to courts martial, except indeed officers, in a limited degree, so far as the honor or discipline of the army be affected." The general principle of the subordination of the military to the civil power is thus stated by *Mr DeLolme*: "All courts of a military kind are under a constant subordination to the ordinary courts of law. Officers who have abused their private power, though only in regard to their own soldiers, may be called to account before a court of common law, and compelled to make proper satisfaction. Even any flagrant abuse of authority committed by members of courts martial, when sitting to judge their own

Opinion of advocate general regarding amenability of British officers and soldiers to mofussil magistrates in petty cases of assault, &c.

* See chapter of European British subjects in book 8.

330. As regards the amenability of British officers and soldiers to magistrates, under the 53rd George III, chapter 155,* with reference to the provisions of the 4th George IV,—chapter 81, and Reg. XX. 1825, the following opinion was given by the advocate general. “The statute 4th George IV, chapter 81, although it repealed the next or 106th section of the statute 53 George III, chapter 155, leaves the 105th section unrepealed; and Reg. XX. 1825, which was enacted by a subordinate legislature, and in my opinion solely with a view of carrying out the provisions of statute 4th George IV, chapter 81, cannot in any way affect the operation of the statute 53 George III, chapter 155. The statute 4 George IV, chapter 81, has been amended and re-enacted by successive enactments, 3 and 4 Vict. chapter 37, and 12 and 13 Vict. chapter 43. Under the latter Acts the same powers as were formerly conferred upon courts martial, distant more than 120 miles from the presidency, have been continued; but they both contain an express provision that nothing in those Acts contained shall be construed to exempt any officer or soldier from being proceeded against by the ordinary course of law, a provision which leaves the jurisdiction of the magistrates under statute 53 George III, chapter 155, and Act V. 1848, and of the supreme courts, wholly untouched. With respect to offences committed by British officers and soldiers, and not falling within the terms of statute 53 George III, or Act V. 1848, I am of opinion that they are only cognizable by the supreme court or courts martial, both of which courts appear to me to have concurrent jurisdiction over British officers resident beyond 120 miles from the presidency.” C. O. No. 91 of vol. 4.

SECTION III. OF COMPLAINTS.

Magistrate.
Receipt of petitions.

331. The magistrate should himself hear and decide on every petition, and should pass an order on it in the presence of the petitioner: he should not make over petitions, when first presented, to law-officers and sudder ameen for report.(a) Const. No. 627.

people, and determine upon cases entirely of a military kind, makes them liable to the animadversion of the civil judge. To the above facts concerning the pre-eminence of the civil over the military power at large, it is needless to add, that all offences committed by persons of the military profession, in regard to individuals belonging to the other classes of the people, are to be determined upon by the civil judge. Any use they may make of their force, unless expressly authorized and directed by the civil magistrate, let the occasion be what it may, makes them liable to be convicted of murder for any life that may have been lost. To allege the duties or customs of their profession in extenuation of any offence, is a plea which the judge will not so much as understand. Whenever claimed by the civil power, they must be delivered up immediately.”

(a) Petitions ought to be received every day at a fixed hour. The practice of taking petitions only on stated days of the week is very reprehensible. It is said in the case of Suroop Chunder Surmah, (Reports L. P. 1852, part 2, page 812) that it is objectionable for a magistrate to receive petitions in a box, or in any other way to afford “opportunities for fraud and for making malicious aspersions, which could not with safety be attempted if petitions were never taken except openly from the presenters, and they were heard instantaneously.” But this opinion seems questionable. Such a rule would be properly followed in a judge’s office; but a magistrate is also a police officer, and he may frequently be deprived thereby of valuable information, which a timid native ventures to put forward only anonymously. At the same time it behoves him to act on a benamie petition with great caution, deliberation, and self-command.

332. All complaints, or charges with the orders thereon, are to be recorded in the office of the magistrates. *Beng. Reg. IX. 1793, sect. 23. Ced. Prov. Reg. VI. 1803, sect. 22.*

333. Magistrates are prohibited from requiring complainants to swear to the truth of what is alleged in their petitions. When any petition preferring a criminal charge is thought by the magistrate to call for judicial investigation, the only regular and proper course is to take the complainant's deposition on oath or solemn declaration. C. O. No. 27 of vol. 4, *W. P.*

Petitioners not to be sworn to contents of petitions.

334. Upon a complaint being preferred in writing to a magistrate, against any person subject to his jurisdiction, for treason^(a); murder; robbery; house-breaking; theft; setting fire to a village, house, or other building; counterfeiting the coin; or any other crime declared not to be bailable; or though not so expressly declared involving such dangerous breach of the peace, or degree of criminality, as from the facts deposed to before the magistrate may appear to require the immediate apprehension of the accused, and to render the admission of bail unsafe and improper;—the magistrate on the truth of the charge being deposed to by the complainant (or as is required below in paras. 336 and 337), is to issue a warrant for the apprehension of the accused in prescribed form,* and directed to the nazir of the criminal court. *Reg. IX. 1807, sect. 3, cl. 1 and 2.*

HEINOUS OFFENCE.

On the truth of complaint being deposed to by complainant, the magistrate to issue warrant.

* *v. Appendix A. No. 6, and Book 1, Chap. 4, Sect. 3.*

335. If the magistrate, in any bailable case of the nature above described, judge it proper to authorize the officer, to whom the warrant is committed, to receive bail for appearance (with or without security for keeping the peace), it shall be so specified in the warrant, with the extent of the bail (and security) required, in prescribed form.* *Reg. IX. 1807, sect. 3, cl. 3.*

If the case is bailable what warrant.

* *v. Appendix A. No. 2: forms of bail and security bonds are also given in Nos. 3 and 20.*

336. The attendance and deposition of the complainant is not indispensable in preferring a criminal charge, when sufficient reason can be assigned for his non-attendance. If the complainant be unable to attend in person, or if he were not himself present at the commission of the act complained of, his written plaint presented by an authorized agent,† and corroborated by the deposition on oath or solemn declaration of one or more persons present, or otherwise personally informed of the truth of the complaint, shall be sufficient grounds for receiving the same, and for issuing process against the party accused, unless the magistrate see reason for making the previous inquiry authorized as below. *Reg. IX. 1807, sect. 4.*

The complainant himself need not appear in certain cases;

† *v. Section infra, "Of Mokhtars."*

337. But, in ordinary cases, individuals having charges of a criminal nature to prefer, are to attend in person to institute and conduct the prosecution before the magistrate, and likewise before the sessions court; and agents are not to be permitted to interfere in the conduct of such prosecutions, unless substantial reasons be shown (to be recorded on the proceedings of the magistrate) why the prosecutor himself should not attend to carry it on in person. The nizamat adawlut and session judge are to restrain any ill-judged exercise

but must in ordinary cases, without reason shown to the contrary.

(a) When any person is charged with treason, rebellion, or other crime against the State, the magistrate is to give immediate notice thereof to government; and is to pay immediate and strict attention to all orders, which are transmitted to him by government for the apprehension of persons charged as aforesaid, or for making any enquiry respecting such persons, or for committing them to take their trials before the ordinary courts, or before the special courts described in this Act. Act V. 1841, sect. 6. See sect. 1, chap. 2, Book 5, "of State Offences."

of the discretion vested in the magistrate with respect to this point. Reg. III. 1812, sect. 3.

Warrant not to be issued unless the truth of complaint is deposed to on oath, or on credible information ;

338. But no warrant for apprehension is to be issued at the instance of a complainant, unless the truth of the charge is deposed to on oath (or solemn declaration) either by the complainant himself or by some other credible person. This however is not to restrict a magistrate from issuing process to apprehend a person suspected of having committed a heinous crime, or for whose apprehension sufficient cause may appear upon the report of a police officer, or upon any other credible information. Reg. IX. 1807, sect. 4.

339. The provisions of sect. 4. Reg. IX. 1807, expressly authorize the issue of a warrant to apprehend persons charged with serious offences upon credible information without a written complaint or deposition on oath. N. A. R. vol. 1, page 277.—For form of warrant to be used in such cases, see Appendix A, No. 47. C. O. No. 24 of vol. 4.

nor until after examination of prosecutor as to specific facts.

340. And the magistrate is not to issue any process without previously examining the prosecutor as to the specific facts of the case, and satisfying himself that adequate grounds exist for proceeding against the accused. Reg. III. 1812, sect. 2, cl. 6.

Session judge cannot prohibit the issue of warrant ;

341. A session judge cannot order a magistrate not to issue process to apprehend a released convict, or other particular individual. Const. No. 1100.

nor direct apprehension of parties.

342. The sudder court refused to accede to the recommendation of the session judge that the magistrate should be directed to put certain persons on trial, on the ground that such a matter must be left entirely to the discretion of the magistrate. Reports *L. P.* 1856, part 1, page 62.

If the magistrate distrust the truth of the complaint, he may make previous inquiry.

343. If the magistrate see cause to distrust the truth of the complaint, whether from the nature of the charge, as manifestly improbable, exaggerated, or vexatious ; or from the circumstances deposed to before him, considered with the known situation and character of the person accused ; and if the immediate arrest of the party complained against appear unnecessary and objectionable,—the magistrate is authorized to postpone issuing his warrant for apprehension, and to cause a previous inquiry to be made, either by means of the local police officers, or in such other mode as he shall judge most proper for the purpose of ascertaining the truth or falsehood of the complainant's allegations. If the result of the inquiry induce the magistrate to believe the charge well founded, and the offence be of the nature described in section 3†, he is to issue his warrant for the apprehension of the accused, as therein directed. But if the accusation appear groundless, or though well founded if the offence be of a bailable nature, he is, in the former case, to dismiss the complaint, or, in the latter case, to direct bail to be taken from the accused for appearance in person, or by vakeel, to answer the charge. Reg. IX. 1807, sect. 5.

† See above para. 334.

BAILABLE OFFENCES.

Prosecutions for misdemeanors must be commenced by aggrieved parties.

344. A prosecution for a misdemeanor cannot be originated except on the application of the aggrieved party ; N. A. R. vol. 3, page 171 ; Reports *W. P.* 1851, pages 36 and 624 ; and without a formal complaint a charge cannot be taken up. Reports *W. P.* 1855, part 2, page 729. So, a magistrate cannot institute proceedings against, and punish a person, in the absence of any application to that effect from the complainant. Reports *W. P.* 1851, page 90. As regards prosecutions initiated by civil courts, see section "of commitment." See also para. 349.

345. Where it appeared that the prosecutor was not the aggrieved party, having col-
luded with the defendants for his own benefit, it was held that the prosecution was null, and
that the defendants could not be convicted. Reports *W. P.* 1854, part 1, page 745.

No conviction
can be had on the
prosecution of a
third party.

346. Upon a complaint in writing being preferred to a magistrate against a person
subject to his jurisdiction for any bailable crime or misdemeanour, which does not appear to
require the immediate apprehension of the accused, the magistrate, upon the party complain-
ing making oath (or solemn declaration) to the truth of the complaint,—or without such
oath (or declaration), if satisfactory reason be assigned by the complainant for not attending to
make the same, and the truth of the charge be deposed to by some other credible person,—
is to issue a summons,* specifying the offence charged, and, according to the circumstances
of the case, requiring the accused to appear in person or by vakeel to answer the charge on
or before a certain day. Bail for his appearance may be required if deemed necessary.†
Reg. IX. 1807, sect. 6.

If the truth of
the charge is de-
posed to, magis-
trate is to issue
summons.

* *v. Book 1,
chap. 4, sect. 2;
and Appendix A,
No. 1.*
† *v. Appendix
A, No. 3.*

347. If the accused person, on whom a summons has been so served, does not attend
in person or by vakeel, and give bail (if required) according to the exigence of the summons
within the period limited by it, the magistrate is to issue a warrant under his official seal and
signature for the apprehension of the accused; and if he abscond, is to proceed against
him in the manner directed by sect. 4, Reg. XI. 1796 for *Beng.* and *Ben.*; and sect. 4,
Reg. III. 1804 for *Ced. Prov.*; [as modified by sect. 26, Reg. XX. 1817.‡] Reg. IX.
1807, sect. 7.

Warrant to be
issued in cases of
persons neglecting
summons.

‡ *v. Evasion of
process; Book 1,
chap. 4, sect. 10.*

348. When a defendant has been allowed to answer a charge and to defend himself by
attorney, he is bound to appear in person before the magistrate to receive sentence; and it
should not be passed in the absence of the defendant. Reports *L. P.* 1854, part 1, page 433.

Defendant to ap-
pear to receive sen-
tence though he
has answered by
attorney.

349. So much of the foregoing provisions, and so much of any other enactment, as re-
quire a complaint in writing to be preferred to a magistrate, or the attendance of a complain-
ant, is not to apply to any offence which affects the public. Act II. 1856, sect. 1.

OFFENCES
AFFECTING THE
PUBLIC.

Written com-
plaint not required.

350. A magistrate, or other officer having jurisdiction over such offence, may, on the
information of a police officer or other person, given on oath or affirmation, or on his own
personal knowledge (having first recorded the grounds thereof in his own handwriting), pro-
ceed against any person for such offence, in the same manner as if a complaint in writing had
been preferred, and duly deposed to. Act II. 1856, sect. 2.

Magistrate may
proceed on infor-
mation sworn, or
his own knowledge.

351. All proceedings under this Act are subject to the like appeal as other proceedings
of such magistrates and officers. Act II. 1856, sect. 3.

Appeals.

352. All complaints or prosecutions for adultery, fornication,* calumny, abusive lan-
guage, slight trespass, or inconsiderable assault, whether preferred in person or by vakeel,
are to be preferred in the first instance at the catcherry of the magistrate, within the limits
of the jurisdiction of whose court the offence has been committed. This does not apply to
cases of maihem, actual affray, or tumultuary assemblies. Reg. VII. 1811. sect. 3.

PETTY OFFENCES.

To be preferred
in the first instance
to the magistrate.

* Rape is includ-
ed in the original,
but *v. § 355.*

353. Magistrates are strictly prohibited from referring any such trivial cases to their
police officers for investigation and report. All investigations for the purpose of ascertaining

And not to be
referred to the po-
lice.

the truth or falsehood of such charges are invariably to be conducted by the magistrate in person or his assistant, aided so far as is authorized by the existing regulations by the native officers attached to his sudder cutcherry. Reg. VII. 1811, sect. 6.

Police not to take cognizance.

354. Police officers are not to take cognizance of such cases; but are to refer persons preferring such to the magistrate's court, recording the particulars in the thana diary. Reg. XX. 1817, sect. 12, cl. 1 and 2.

Example.

355. Rape is among the offences which the magistrate is prohibited from referring to the police by Reg. VII. 1811; but it is not mentioned in sect. 12, Reg. XX. 1817, among the charges not cognizable by them. Such case may now therefore be legally referred to them for investigation, or may be preferred directly at the thana. Const. Nos. 1174 and 1365.

Charge can be laid without petition by deposition on oath.

356. In such cases, if the complaint is brought before the magistrate by the proper complainant in the course of a judicial investigation in a separate case, charge by petition is not necessary. (This was held in a case of the murder of a wife by her husband in which the prisoner accused the deceased of committing adultery, and the magistrate took up the charge of adultery against the paramour on the deposition on oath of the prisoner.) Const. No. 1199.

Magistrate is to satisfy himself of the grounds of the charge by examining the prosecutor, before issuing process; and, if he distrusts the truth of the charge, the witnesses.

357. In such, as well as in more heinous cases, the magistrates are strictly prohibited from issuing any process without previously examining the prosecutor as to the specific facts of the case, and satisfying themselves that adequate grounds exist for proceeding against the accused party. If the magistrate see grounds to distrust the truth of the charge, previously to issuing process against the accused, he is to summon the witnesses named by the prosecutor, or as many of them as he may judge proper, and examine them as to their knowledge of the facts and circumstances; but inquiries of this nature are on no account to be committed to the police. (a) On such occasions, the rules* contained in the preceding clauses of this section regarding the payment of the subsistence of witnesses are to be duly enforced. Reg. III. 1812, sect. 2, cl. 6.

* v. section 6, "Of witnesses."

Notice of complaint may be served on the accused.

358. When a magistrate instituted a custom of giving the defendants an opportunity of appearing to answer the charge by notice served on them at the time of the institution of the suit, thereby obviating the unnecessary summoning of a large number of defendants, and their consequent ultimate acquittal; the sudder court approved of the practice, observing that such notice to the accused is not compulsory, nor does it in any way supersede the processes prescribed by law for procuring the attendance of accused persons if they do not attend voluntarily. It may be of obvious advantage to give to a defendant, or to one of several

(a) The practice, on a complaint being preferred, of first summoning the witnesses cited in support of them, and after examination discharging the same, before issuing orders regarding the appearance of the same, is not illegal, being authorized by sects. 5 and 6, Reg. IX. 1807. A magistrate may, however, always resummon a witness on the expression of a wish to that effect by the accused, who is entitled under the law (cl. 2, sect. 18, Reg. VII. 1803) as interpreted by Const. Nos. 658 and 1280, to be confronted with the witnesses who depose against him, and cross-examine them; though this privilege is seldom desired to be exercised, at least in the bulk of petty and insignificant cases coming under the cognizance of the local criminal courts. C. O. W. P. No. 1559, Decr. 18, 1854.

defendants, the option of being present on the first taking of evidence upon a charge. (a) C. O. No. 107 of vol. 4. *L. P.*

359. The practice adopted by a magistrate of summoning only one defendant in the first instance, and postponing the summons of the others until he had taken the evidence for the prosecution, was condemned as not being strictly conformable to the regulations; and the authorities were required to adopt every possible means to prevent the indiscriminate summons or apprehension of persons charged with petty offences on groundless suspicion and without sufficient cause. (a) C. O. Nos. 19 and 33 of vol. 2.

Indiscriminate summons to be avoided.

360. In order to accomplish this, a magistrate required his assistants to embody in a proceeding the proof adduced against the accused previous to issuing a summons for their attendance; and he directed the uncovenanted officers to abstain from summoning the accused until they had submitted such proceeding and the original depositions to himself. C. O. No. 63 of vol. 2.

Measures taken to avoid such by subordinates.

361. In cases of a trivial nature, such as abusive language, slight trespasses, and inconsiderable assaults or affrays, in which there may be no reason to apprehend that the accused will abscond, bail for appearance is not to be required in the first instance; but may, at any time during the investigation of the charge, be called for by the magistrate, if circumstances render it necessary. Reg. IX. 1807, sect. 8.

Bail not to be required in the first

362. On a complaint being preferred in writing to a darogah, or other officer of police authorized to receive the same, against a person subject to his jurisdiction, for any bailable* crime or misdemeanor cognizable by the police, and which does not require the immediate apprehension of the accused, the police officer receiving such complaint, upon the complainant making oath or declaration to the truth of the complaint,—or without such oath or declaration, if satisfactory reason be assigned by the complainant for not attending to make the same, and the truth of the charge be deposed to on oath or solemn declaration by some other credible person,—is to issue a summons†. Reg. XX. 1817, sect. 24, cl. 1.

Police officers.

BAILABLE OFFENCES.

On the truth of the charge being deposed to, to issue summons.

* v. ¶ 366.

363. If the charge is of a serious nature, the police officer may require bail, to be specified in the summons;‡ but it is in no case to exceed what may be sufficient to prevent the parties absconding before the case comes before the magistrate, who is then to issue such further process or order as he may judge proper. Reg. XX. 1817, sect. 24, cl. 3.

† v. Appendix A, No. 32.

In serious case bail may be required.

‡ v. Appendix A, No. 33.

364. If an accused person, on whom a summons has been served, does not attend in person or by vakeel, and give bail (if required) according to the exigency of the summons, within the period limited by it, the police officer is to issue a warrant* for his apprehension. Reg. XX. 1817, sect. 24, cl. 4.

If summons is neglected, warrant to be issued.

* v. Appendix A, No. 34.

365. Upon a complaint being preferred in writing to a darogah, or other police officer authorized to receive the same, or on the receipt of credible information, whether given by confessing prisoners against accomplices, or by other person against any person subject to

HEINOUS OFFENCES.

On the truth of the complaint being deposed to, to issue warrant;

(a) There is one objection to this notice, viz. that the service of it cannot be enforced by law.

* For theft and burglary, see special rules in book 2, chap. 8, sect. 6.

his jurisdiction, for any crime of a heinous nature,—such as murder, robbery, house-breaking,* theft,* maiming, wounding, arson, counterfeiting the current coin, or knowingly uttering base coin, or any crime involving a dangerous breach of the peace, such as a violent affray, or assembling persons to commit an affray, or any similar offence requiring the immediate apprehension of the offender,—and on the complainant, or other credible person acquainted with the case, deposing on oath (or solemn declaration) to the truth of the complaint,—the darogah is to examine the party deposing regarding the circumstances of the case; and on his being satisfied from the particulars communicated that there are grounds to believe the charge well-founded, and that the immediate apprehension of the offender is necessary to the ends of justice, he is to cause the accused to be apprehended by a warrant,† and sent in safe custody to the magistrate within 48 hours after his apprehension; unless any special reason appear, why the issue of such process should be stayed until the charge is reported for the orders of the magistrate, in which case such report is to be made without delay. Reg. XX. 1817, sect. 25, cl. 8.

† v. Appendix A, No. 84.

unless in special case.

In what cases bail may not, and may be taken.

366. Persons charged with murder, robbery, house-breaking, theft, arson, counterfeiting the coin, maiming or serious wounding where the life of the person wounded is in danger, are not to be admitted to bail, if there are reasonable grounds for believing such persons guilty;—but in all other cases, if sufficient bail is tendered for appearance before the magistrate, the police officer is to accept such bail,‡ and immediately to release the person apprehended. Reg. XX. 1817, sect. 25, cl. 8.

‡ v. Appendix A, No. 35.

Persons wounding or slaying in self-defence, not to be proceeded against.

367. Persons who wound or slay murderers, robbers, or thieves, in their own defence or in defence of their property, are not to be proceeded against or placed in restraint, or required to give bail, except under special orders of the magistrate. Police officers violating this rule are to be dismissed. Reg. XX. 1817, sect. 25, cl. 10.

Security to keep the peace may be required in addition to bail.

368. In cases of manifest necessity, when the police officer is apprehensive of danger to the public tranquility by the enlargement of a person, arrested on a charge of a bailable offence, without security for his peaceable conduct, he may require from him security to keep the peace, in addition to bail, the surety (or sureties) executing a recognizance§ in an amount to be regulated by the circumstances of the case, and the condition of the person executing the same. Reg. XX. 1817, sect. 25, cl. 11.

§ v. Appendix A, No. 36.

Subsequent proceedings.

Particulars of the act complained of to be recorded.

369. The magistrates upon receiving any charge, are to be careful to ascertain from the complainant, and to record upon their proceedings, on what day of the month, in what year, and at what time of the day or night, the act complained of was committed. Beng. Reg. IX. 1793, sect. 6. *Ced. Prov. Reg. VI. 1803, sect. 6.*

Course of inquiry.

|| Presence of a complainant unnecessary in offences which affect the public. Act. II. 1856, sects. 1 and 2; para. 849.

370. Upon the prisoner being brought before the magistrate, he is to enquire into the circumstances of the charge, and to examine the prisoner, and the complainant,|| and also such other persons as are stated to have any knowledge of the crime or misdemeanor alleged against the prisoner, and to commit their respective depositions to writing. The complainant and the witnesses are to be examined on oath, but the prisoner shall not be required to swear to the truth of his deposition. Beng. Reg. IX. 1793, sect. 5. *Ced. Prov. Reg. VI. 1803, sect. 5.*

371. Magistrates are also, in all cases, to make full inquiry into every circumstance likely to lead to the ascertainment of the truth, and are competent to exercise their discretion in taking evidence on behalf of the person accused, with a view to afford him an opportunity of establishing his innocence, before proceeding to commit him to take his trial at the sessions. Reg. VIII. 1830, sect. 2, cl. 1. See also C. O. No. 54 of vol. 2, paras. 13 and 14.

372. When the prisoner is put on his defence, his guilt is not to be assumed; the charge should be clearly stated to him, and he should be asked in simple terms what he has to say for himself. N. A. R. vol. 6, page 264.

Charge to be clearly stated to defendant.

373. It was held irregular to proceed to a decision in a case of trespass, when another case under Act IV. 1840, regarding the same subject matter, was at the time pending. In such cases, the court observed, if there be any matter for investigation, as regarding the plunder or obstruction, not the produce of land, necessarily connected with the disputed possession of land, such matter must be brought forward in a distinct complaint, and is most properly to be disposed of after the questions falling under Act IV. 1840 have been decided. Reports L. P. 1852, part 1, page 896.

Where the acts complained of involve offences of a distinct character, distinct complaints should be made.

374. After this inquiry, if it appear to the magistrate that the crime or misdemeanor charged against the prisoner was never committed, or that there is no ground to suspect him to have been concerned in the committing of it, the magistrate is to cause him to be forthwith discharged, recording his reasons for releasing him. On the contrary, if it appear to the magistrate that the crime or misdemeanor was actually committed, and that there are grounds for suspecting the prisoner to have been concerned in the perpetration of it, the magistrate is to cause him to be committed to prison, or held to bail (according as the offence is bailable or not), to take his trial at the sessions; and is to bind over the complainant to appear and carry on the prosecution, and the witnesses to attend and give their evidence. Beng. Reg. IX. 1793, sect. 5. *Ced. Prov. Reg.* VI. 1803, sect. 5. (a)

Prisoner to be released, or committed according to the evidence.

375. Magistrates are competent, of their own authority, notwithstanding the existence of grounds of suspicion, to release any person charged before them with any crime or misdemeanor, whenever, from the whole of the evidence adduced in support of the charge, and that adduced in behalf of the party charged, there does not appear a reasonable probability of conviction under a committal for trial before the sessions. Reg. VIII. 1830, sect. 2, cl. 2.

But not to be committed if no probability of conviction.

376. Such order of release is not such an acquittal as would bar the re-institution of the case in the event of further evidence being found, if it be made conditional on the discovery of further proof, or if the offence charged be beyond the competency of the magistrate. Reports W. P. 1856, part 1, page 20.

Such order not an acquittal.

377. It is competent to a magistrate to limit his conviction to what he may consider to be established against a prisoner upon evidence in respect to particular facts, although the charge, referring to the same facts, which was at first preferred against the prisoner, and to which he was called on to answer, may have been of a much graver nature. The charge, as in the first instance laid before, or stated by, a magistrate, may be inaccurate or mistaken.

Conviction to be confined to what is proved in evidence.

(a) For the rules to be observed in making commitments to the sessions, see subsequent section "Of commitments."

In his decision it is his duty to confine his judgment and sentence to the offence that he finds to be proved. Reports *L. P.* 1853, part 1, page 579.

Further instructions as to injudicious commitments.

378. It is obviously the duty of each committing officer gravely to consider the actual weight and character of the evidence against each prisoner, before he proceeds to make his commitment. A prisoner committed to the sessions is, in most cases, subjected to imprisonment, or to detention on bail until the trial can take place; and it is not a light thing to expose any person (who must always be presumed to be innocent, till proved otherwise) to such disgrace and distress as must invariably attach to such a condition. The party injured, who was, perhaps, reluctant even to complain to the magistrate, should not, unless there be grounds to anticipate a conviction, be further harassed by an order for his attendance at the sessions. The witnesses, who, for the most part, have no interest in the prosecutor's case, should not, without sufficient cause, be again called away from their homes to attend at the sessions, after they have already once appeared before the magistrate. Finally, the time of the judge and his law officer, or of a jury, should not be uselessly employed when the other claims on their services are so numerous and important. All these evils necessarily result from injudicious and indiscriminate commitments, and it is the bounden duty of every officer to put a stop to them. The court have too frequently had to notice improper commitments, where fatal contradictions between the evidence recorded by the magistrates and the original proceedings before the darogah have been entirely overlooked and left unexplained by committing officers. In many dacoities, the earlier reports from the police show distinctly that no person was recognized; notwithstanding which, the committing officer puts faith in the subsequent depositions (almost *verbatim* similar one to the other) given before himself, in which a number of persons are identified under the most improbable, sometimes hardly possible, circumstances. The result of such a commitment must be an acquittal. With regard to the class of doubtful cases, where the guilt of the prisoner turns chiefly on circumstantial evidence, every thing depends upon the experience and discretion of the committing officer; and the court are unable, therefore, to lay down any instructions for their guidance beyond the considerations already suggested above. They observe, however, that such occasions afford opportunities for exhibiting judicial aptitude, and they will always be ready to record their approbation of those officers, who evince their ability and judgment, which will be tested by the result of their commitments. C. O. No. 19, July 11, 1855, *L. P.*

Bail-bonds for prisoners released upon bail, and recognizances of prosecutors and witnesses.

379. All bail-bonds for prisoners released upon bail, and the recognizances required to be taken from prosecutors and witnesses, are to be for a specific sum, the amount of which is to be determined by the magistrate, upon a due consideration of the case and the circumstances and situation in life of the parties, and are to contain a clause declaring the amount forfeited to government in the event of the condition of it not being performed. *Beng. Reg.* IX. 1793, sect. 5. *Ced. Prov. Reg.* VI. 1803, sect. 5.

Intermediate written proceedings unnecessary.

380. In all cases investigated by the magistrate, no intermediate proceedings of length are to be admitted. In the event of its being necessary to require further investigation by the police, or the attendance of further evidence, it will be sufficient to pass an order to that

effect in as many words, without entering into any detail of the facts of the case. C. O. No. 138 of vol. 3, *L. P.*

381. Every decision, sentence, or final order, which shall hereafter be made or passed by any officer of the East India Company acting judicially, together with the reasons for making or passing the same, shall be written in the vernacular language of such officer; and shall be dated and signed by such officer in court at the time of his making or passing the same; and the original shall be filed with the record or proceedings in the case; and a translation thereof, where the original is recorded in a different language to that in ordinary use in proceedings before such officer, shall be incorporated in the decree or record of the decision, sentence, or order. Act XXXIII. 1854, sect. 1.

All officers acting judicially to record their decisions in their own vernacular;

which are to be filed with translation on the record.

382. Nothing in this Act shall be so construed as to require officers of the East India Company acting judicially to write their decisions, sentences, injunctions, or orders, in open court. Act XXXIII. 1854, sect. 3.

Decisions need not be written in open court.

383. No appeal shall lie from any decision, sentence, injunction, or order, nor shall the same be reversed or remanded, upon the ground of non-compliance with the provisions of this Act. But the appellate court may, by precept, require the officer of the lower court to comply with the provisions of this Act; and to certify his reasons for any such decision, sentence, or order, to the appellate court; and any such appellate court may, if it deem it necessary for the ends of justice, postpone its final decision in the appeal, until such precept shall have been returned. Act XXXIII. 1854, sect. 4.

No appeal for non-compliance with this Act. But appellate court may require compliance.

384. Every criminal officer, acting judicially, is bound to record his decision, sentence, or final order, together with his reasons for making or passing the same, in the mode prescribed above. Prescribed tabular forms* are to be filled up and placed on the record of each case. Where it may happen that, on the same charge, one prisoner is convicted and another is acquitted, both forms must be employed. In cases under Act IV. 1840, and in miscellaneous cases, no form is prescribed; but each officer is to adopt such form as is required by the special nature of the case before him. In no case is it necessary to give an abstract of the depositions of witnesses. Such abstracts are useless and untrustworthy. The officer deciding the case has already heard the depositions at length, and the appellate court must also peruse the original depositions. Such parts of the evidence as are necessary to the understanding of the case will be so referred to in the grounds of the decision recorded by the officer who tries a case, that he will have only himself to blame, if his arguments founded thereon are misunderstood by the appellate authority. C. O. No. 14, Feb. 9, 1855, *L. P.* C. O. No. 789, June 16, 1855, *W. P.*

Forms prescribed for decisions.

* See App. C. Nos. 1, 2, and 3.

Abstract of evidence unnecessary; but reasons of decision to be plainly set forth.

385. Native deputy magistrates will of course use only the vernacular form; but European officers will file with the record of every case decided by them both an English form, and a counterpart in the vernacular. C. O. No. 789, June 16, 1855, *W. P.*

Natives to use only vernacular form.

386. It is the duty of session judges to see that these rules are duly carried out by the magisterial authorities, who on their part must exact an observance of them from the deputy magistrates under their control; must take care that those officers are correctly informed of

Session judges and magistrates to see that their subordinates attend to these rules.

the purposes of the Act ; and must take proper notice of every occasion of its injunction being neglected. C. O. Jan. 20, 1855, *W. P.*

**Malicious,
&c.,
complaints.**

If of petty offence within the competence of the lowest court.

* i. e. the offences then within the competence of the magistrate.

Punishment within the power of the magistrate on any such complaint.

Construction of the above powers.

Limitation of cognizance. Magistrate cannot punish for such complaint laid before collector.

Police how to act in such cases.

The complaint must be on oath.

False charge must be such as to cause injury and annoyance.

387. When complaints brought before a magistrate for petty offences, such as abusive language, calumny, inconsiderable assaults, or affrays, or petty thefts,* appear to him to be litigious, vexatious, or groundless, he is authorized to punish the complainant by imprisonment not exceeding fifteen days, or fine not exceeding fifty rupees—unless the offender is an actual proprietor of land paying an annual revenue to government of more than ten thousand rupees, or a proprietor of *ayma* land paying a quit revenue to government exceeding five hundred rupees per annum, or of *lakhiraj* land the annual produce of which is above one thousand rupees, in which cases the offender is liable to a fine not exceeding two hundred rupees. *Beng. Reg. IX. 1793, sect. 10. Ced. Prov. Reg. VI. 1803, sect. 10.*

388. Whenever any charge upon investigation proves manifestly malicious, vexatious, or unfounded, the magistrate may, in extension of the above punishment, sentence the person by whom the charge has been preferred to such period of imprisonment, not exceeding six months, as on consideration of the apparent motives and tendency of the charge appears proper. *Reg. VII. 1811, sect. 5.*

389. The punishment under the latter provision cannot be inflicted *in addition* to that prescribed in the former;—the maximum would be six months' imprisonment, or a fine of fifty rupees (except in the cases of the particular classes noted, in which the fine may be two hundred rupees.) *Const. No. 459.*

390. The power of the magistrate in cases of this nature is restricted to the cognizance and disposal of those only that have been primarily instituted before him. He is not competent therefore to award punishment for a false complaint made before the revenue authorities, no case connected with such complaint having originated in his court. *Const. No. 1220.*

391. If, upon inquiry by police officers, a complaint appears to be false and malicious, the darogah is to report the circumstances to the magistrate, and to require the complainant to furnish bail for his appearance before the magistrate; in the event of his not conforming to such requisition, he is to be forwarded under custody to the foudjaree court. *Reg. XX. 1817, sect. 23, cl. 3.*

392. A person preferring a false and malicious complaint before a darogah, but not sworn to the truth of it, is not liable to punishment under the above provisions. *Const. No. 1189.*

393. The giving false information to the police, not on oath or solemn affirmation, is not a punishable offence. *Reports L. P. 1852, part 2, page 968.*

394. The provisions of sect. 5, *Reg. VII. 1811*, only empower the courts to award sentence of imprisonment, when a false and unfounded charge is laid against a particular person, so as to cause injury and annoyance to him; but not where the complainant has made no charge against another, but has merely made a report to the police of the occurrence of a dacoity, which report, on enquiry, has been proved to be false. *Colebrooke's Reports, page 111.*

395. It is not strictly indispensable to take a defence from a party before sentencing him for a false and malicious charge, as the proceedings connected with the charge contain the proof of its being false and malicious, and it is upon them that his summary conviction is by law permitted. The court however think that the party accused of bringing such charge should be allowed, before being sentenced, the opportunity of making any statement by which he may desire to remove the impression of the false and malicious nature of the charge arising out of the proceedings. The absence of such statement does not, however, vitiate the conviction and sentence. *Letter from Nizamut Adawlut to Judge of Behar, No. 428, May 21, 1851.*

It is not necessary to take defence of a party before sentencing him for false and malicious charge.

396. The power vested in the magistrate by these provisions should be exercised with the greatest discretion. Session judges can receive appeals from the magistrate's decisions, and pass such orders therein as they may think just and proper. Const. No. 610.

Magistrate to use discretion.

397. The commissioner of circuit was informed that he was not competent, in that capacity, to fine a person under section 5, Reg. VIII. 1825 [which provided for the punishment of persons bringing false and malicious charges against an European public officer, and empowered certain specified authorities to punish for such charges, but is repealed by Act XXVI. 1839]; but that, with regard to the complaint against the nazir and peons of the magistrate's office, he possessed, as superintendent of police, the powers of magistrate in the punishment of false and malicious complaints. Const. No. 754.

Power of superintendent of police.

398. A session judge is not at liberty, in a case of commitment, to punish the prosecutor for a groundless and malicious complaint, as the very fact of commitment affords sufficient presumption that the complaint was not of that character ;—though he is competent to commit him and his witnesses for perjury, in the event of his seeing reason to believe that a false accusation has been preferred on oath, and an attempt made to substantiate it by false evidence. But in the case of appealed prosecutions brought by private individuals before the session judge, he can exercise the same power as a magistrate in punishing such complaints. Const. Nos. 528 and 530.

Judge cannot punish in a case committed to the sessions ;

but may in appeals.

399. A merely litigious appeal is not punishable by a magistrate ; but if a prosecutor, whose complaint has been dismissed by the subordinate court, persist in bringing before a magistrate a charge evidently malicious or greatly exaggerated, it would be competent to that functionary to punish him under sect. 5, Reg. VII. 1811. Const. No. 1208.

A merely litigious appeal not punishable.

400. A false deposition on oath containing a deliberate and specific criminal charge, which the deponent knows to be unfounded, and which also appears to be malicious, is within the provisions of perjury, notwithstanding the provisions (above-quoted) for false and malicious charges. Const. No. 233.

These provisions do not supersede an indictment for perjury.

SECTION IV.

OF INFORMERS.

Goindahs how to be employed.

Their informations not to be received without evidence.

Not to be intrusted with the execution of process.

How to be paid, and payments how to be charged.

Police officers not to employ;

and to apprehend persons professing to be employed by magistrate.

401. The duty of goindahs is to discover the haunts of dacoits; to watch their movements; to mix with them occasionally with a view of acquiring accurate intelligence of their operations and designs; to communicate to their employer the result of such enquiries; and finally to point out to the police officers the persons whom the magistrate may order to be apprehended. Magistrates are to be careful in observing the strictest adherence to the provisions of Reg. IX. 1807; and are not to issue process against any one, on a criminal charge or information from a person known to be a goindah, without satisfactory evidence of the truth of the accusation. Magistrates are not to intrust the execution of any criminal process to a goindah, nor to allow any authority whatever to be exercised, directly or indirectly, by any person of this description; and the utmost vigilance is to be observed to prevent every possible abuse in cases in which a goindah is in any way concerned. Goindahs should receive a small monthly allowance for their immediate subsistence; and should be rewarded for any particular duty according to their activity and fidelity; the fixed allowances should be charged in contingent bills; but rewards will come within the provisions of section 18, Reg. XVI. 1810.(a) C. O. Nos. 93 and 78 of vol. 1.

402. The darogahs are prohibited from encouraging or employing, without the knowledge or express sanction of the magistrate, any goindahs who earn a livelihood by the profession of an informer; and they are to apprehend, and to send to the magistrate, any persons giving out that they are employed as goindahs by the magistrate or by the superintendent of police, unless they can show a written authority from such officer. This is not to be construed to preclude police officers from employing persons to trace offenders, who have eluded the pursuit of justice; or from encouraging persons to furnish information, by which robbers or other known criminals may be discovered and apprehended. On the contrary,

(a) "I will not undertake to examine the merits of the experiment, which was resorted to a few years ago for the purpose of invigorating and improving our system of police; because men of greater knowledge and experience than myself have canvassed the plan, and after a very elaborate discussion, it is still vehemently condemned by one party, and as vehemently extolled by the other. I allude to the employment of goindahs or informers, as instruments of police. With respect to these persons I shall only observe that as far as I had an opportunity of judging of their agency in the judicial situation which I formerly held, my testimony is decidedly against them. I regarded the employment of goindahs as a measure pregnant with the greatest mischief; and I was satisfied that they were scarcely a less grievous burden upon the country than the bands of robbers whom they were employed to root out. I do not mean to assert that a magistrate should not look abroad for information, or that he should not employ instruments to obtain it. I object to those roving commissions, which have been given to men of questionable and even infamous character, under which they erect petty tribunals in the interior of the country, spread alarm wherever they appear, suborn evidence by the most shameless means, conjure up offences which have no existence but in their own atrocious machinations, levy contributions from those who are rich enough to purchase off accusation, and finally draw the indigent and helpless to a jail for the purpose of manifesting a merciless and mischievous activity. These abuses are not the creation of imagination. I remember full well to have convicted a band of goindahs of the most oppressive and criminal conduct; and if proof be required of the irregular and unjustifiable proceedings of these men, the public records will, I believe, supply it. The bands of dacoits, which infest the country are no doubt, a very serious evil; but there is no description of robber so formidable as the licensed free-booter who acts under the sanction of law. *H. St. G. Tucker's Memorials of Indian Government, page 196.*

the darogahs are to encourage such persons to communicate all the information possessed by them; and are to report to the magistrate any instance of meritorious service on the part of any such individuals, by which offenders are brought to justice, whether such individuals have exposed themselves to personal risk and trouble, or have merely supplied intelligence. Reg. XX. 1817, sect. 11, cl. 7.

But they are to encourage persons in giving information; and are to report for rewards.

SECTION V.

OF CONDITIONAL PARDON.

403. In cases of murder, gang-robbery, highway-robbery, murder by thugs, coining, and forgery, as well as in cases of burglary and theft attended with circumstances of aggravation, magistrates are empowered, without previous reference to any other authority, to tender a pardon to one or more persons (not being principals), supposed to have been directly or indirectly concerned in or privy to the offence, on condition of their making a full, true, and fair disclosure of the whole of the circumstances within their knowledge relative to the crime committed, and the persons concerned in the perpetration thereof, or of their pointing out (in cases of robbery, burglary, and theft) the mode in which the stolen property may have been disposed of. Reg. X. 1824, sect. 3, cl. 1. (a)

Magistrate empowered to tender a pardon to accomplices in certain crimes on condition of disclosure of circumstances, persons, &c.

404. Persons to whom pardons are tendered under the above provisions are to be examined without oath. Reg. X. 1824, sect. 3, cl. 2.

Such persons to be examined without oath,

405. Any examination by the magistrate of a prisoner to whom pardon has been tendered, must be taken without oath. It is for the sessions court alone at the trial to receive the evidence so tendered on oath; and to order the commitment of the prisoner for the original offence, if he has not fulfilled the conditions of the pardon. C. O. No. 1, January 2, 1854, *L. P.* The *Western* court hold that he must be called upon to make a full disclosure of the circumstances within his knowledge before his examination on oath as an approver. Reports *W. P.* 1854, part 2, page 381.

by the magistrate.

406. A prisoner, admitted as a witness, should be examined *de novo*. It is not sufficient that he should be asked to depose to the truth of the statement made by him as defendant. Const. No. 1137.

Evidence to be taken *de novo*,

407. The depositions of prisoners, admitted as witnesses, should be taken before the magistrate in the presence of those whom they may affect. Const. No. 405.

in the presence of those whom it may affect.

408. In any case in which a magistrate exercises the powers vested in him by this section he is to record on his proceedings, either in English or the vernacular, the considerations which have induced him to deem such a course of procedure advisable. Reg. X. 1824, sect. 3, cl. 3.

Magistrate's reasons to be recorded,

(a) Construction No. 152, dated April 7, 1811, requires evidence to the privity, or criminality, of the person proposed to be pardoned to be first taken; but this was ruled in accordance with sect. 5, Reg. XIV. 1810, which is repealed by Reg. X. 1824; and as there is no provision to this effect in the latter regulation, the construction must be held to be superseded.

in a roobakaree,

409. Whenever a magistrate has occasion to tender a conditional pardon under this law, he is, if it be accepted, immediately to record a roobakaree, stating the fact of his having offered the pardon, and the reasons which induced him to make the offer. If the case is committed to the sessions, the judge is to be careful to annex this roobakaree to the deposition taken by him from the party who has thus become a witness through the offer of pardon. C. O. No. 113 of vol. 4, *L. P.*; and No. 957, August 2, 1854, *W. P.*

which the judge is to annex to proceedings.

Prisoner's answer to be recorded before offer is made.

410. The magistrate should not make an offer of conditional pardon, until the prisoner's answer has been recorded, whether he denies or confesses the charge laid against him. Reports *L. P.* 1855, part 2, page 505.

Pardon may also be tendered with a view to obtain King's evidence.

411. A magistrate may also tender a pardon to any accomplice or accessory, in a crime of the descriptions specified above, with a view to obtain his evidence in the trial of the other offenders. In such cases he should examine the individual in question in the first instance without putting him on his oath. Reg. X. 1824, sect. 3, cl. 4 and 5, as modified by sect. 7, Reg. I. 1829.

Provisions confined to crimes specified.

412. A magistrate is not authorized to tender a pardon to persons concerned in any other crimes than those specified above:—so held in regard to a case of affray, and a case of torturing and false imprisonment. Const. Nos. 535 and 1026.

But government may admit in any case.

413. But application may be made to government with the view to admit to pardon, under sect. 6, Reg. XIV. 1810, any person charged with or convicted of any criminal offence. Reports *L. P.* 1852, part 2, page 383.

Pardon may be tendered to more than one.

Interval to be allowed for consideration.

414. A pardon may be tendered to more than one individual of the number concerned:—and 24 hours is considered a proper interval to be granted to persons to whom pardon has been offered, before they are called upon to signify their determination to accept it or not. Const. No. 405.

Persons giving information through police entitled to pardon.

415. A person concerned in an offence of the nature specified above, giving information to a magistrate through a police officer, which may lead to any of the objects for which a magistrate is authorized to offer a pardon by the above provisions, is entitled to such pardon. Const. No. 89.(a)

Cautions to be observed in tendering pardon.

416. Magistrates are to be cautious not to tender pardons to principal offenders; and in no case to make the offer to accomplices or accessories without a reasonable prospect of recovering the property plundered through their means,—or of thereby securing the apprehension and conviction of the principal offenders, or of the receivers of the stolen property. In cases in which there appears no prospect of obtaining other evidence than the deposition of an accomplice or accessory, a pardon is not to be granted. Reg. X. 1824, sect. 4, cl. 1 and 2, as modified by sect. 7, Reg. I. 1829.

Evidence of principals admissible in *L. P.*

417. Although pardon ought not to be tendered to principal offenders, yet their evidence is not on that account inadmissible. *N. A. R.* vol. 6, page 111. But in the *Western*

(a) This construction was ruled in reference to sect. 9, Reg. I. 1811, which has been repealed by Reg. X. 1824; but it appears equally applicable to the latter.

court it has been held, when the principal has been illegally pardoned and admitted as a witness, that his evidence is inadmissible. Reports *W. P.* 1852, page 1349.

418. The word principal is not used here in its English law acceptation, but merely as a comparative adjective. It applies to those whose guilt is believed to be the deepest. Reports *L. P.* 1852, part 2, page 383. So, where a servant had written a forged deed by the order and in the presence of his master from a rough draft which the latter had furnished, it was held that he was not a chief offender, and that he was rightly admitted to give evidence. Reports *W. P.* 1853, part 1, page 69.

Meaning of principal.

419. A magistrate cannot offer a pardon to a person charged with participating in a crime committed in a district in which he has no jurisdiction. Const. No. 1232.

Jurisdiction.

420. The superintendent of police is to bring to the notice of the nizamut adawlut all instances which may come to his knowledge of the injudicious or improper exercise of the powers vested in the magistrates by this regulation. Reg. X. 1824, sect. 4, cl. 3.

Injudicious or improper exercise of power.

421. A magistrate, after committing a prisoner for trial, cannot legally quash his commitment, release one or more of the prisoners, and make him or them witnesses for the prosecution in the same trial. Const. No. 857.

Magistrate cannot offer pardon after commitment.

422. During the interval between the tender of pardon, and the recording of the approver's evidence at the sessions trial, he will remain as a prisoner in the magistrate's custody. C. O. No. 1, January 2, 1854.

Approver to remain in custody.

423. It is competent to the session judge, or to the nizamut adawlut, at the time of trial, to instruct the magistrate to tender a pardon to any accomplice or accessary, with a view of obtaining his evidence on oath as a witness on the trial. Reg. X. 1824, sect. 5, cl. 2.

Session judge or nizamut may direct the offer of pardon.

424. But a session judge is not competent to admit a prisoner to give evidence against his fellows, after he has been put upon his trial before the sessions court. In a case in which this had been done, the court annulled the proceedings as regarded that prisoner, and directed him to be tried on the charge on which he had been committed. N. A. R. vol. 4, page 32. In a later case the *Western* court cancelled the pardon and the proceedings taken subsequently, but directed the judge to offer a fresh pardon through the magistrate, and to complete the trial; after which they convicted the other prisoner. Reports *W. P.* 1855, part 2, page 129.

But not, after the prisoner has been put on his trial before the sessions.

425. In a case of murder, however, in which one of the prisoners was convicted by the session judge of concealing the murder, the court directed that a free pardon should be offered to him on condition of disclosing the circumstances of the case within his knowledge; and on the completion of the trial the pardon was confirmed. N. A. R. vol. 4, page 255.

But the nizamut directed the offer to be made to a prisoner after conviction.

426. A magistrate is not competent to commit to the sessions, without reference to the court, a prisoner to whom a pardon has been tendered by order of the nizamut adawlut. N. A. R. vol. 2, page 289.

If the court directs the offer, magistrate is not to commit.

427. It is competent to the session judge at the time of holding the sessions, or to the nizamut adawlut if the final sentence is passed by the latter court, to direct the commitment of any person to whom a pardon has been offered under the above provisions, if it

The session judge or nizamut may order the committal of a person not

conforming to the conditions.

appears in evidence that such person has not conformed to the condition under which the pardon was tendered, either by wilfully concealing anything essential, or by giving false evidence or information with a view to the conviction of an innocent person. Reg. X. 1824, sect. 5, cl. 1.

And the judge must take the evidence of the approver before he can revoke the pardon.

428. And when a session judge, on the mere view of the record, directed the magistrate to commit a prisoner, whom he had made an approver, and without taking his evidence, on the ground that a pardon should not have been tendered, and that the prisoner had not fulfilled the condition on which it was tendered,—the court held that the judge had exceeded his authority; that he could not direct the committal without taking the approver's deposition, and then only in case the evidence showed that he had not conformed to the condition on which he was pardoned. Reports *L. P.* 1855, part 2, page 505.

But the magistrate cannot recall a pardon.

429. But the magistrate is not empowered to recall, of his own authority, a tender of pardon duly made and accepted. The proper course is to report the prisoner's non-fulfilment of the conditions to the session judge, and to be guided by his instructions. *N. A. R.* vol. 5, page 76.

Nizamut may revise proceedings and annul orders.

430. It is competent to the nizamut adawlut to revise the proceedings of the magistrate in any case in which a pardon is tendered to an accomplice or accessory, and to annul the orders passed on such proceedings, if it appears that a pardon has been granted on insufficient grounds. Reg. X. 1824, sect. 5, cl. 3.

In such case his evidence not to be used against the prisoner.

431. The statement made by the prisoner before a magistrate on conditional offer of pardon cannot be received as evidence against him, if committed for trial for the original offence on the ground of his having failed to fulfil the conditions under which the pardon was tendered to him. Const. No. 1041.

Example.

432. An approver having been committed by order of the session judge on the original charge, on the ground of his having failed to fulfil the conditions of the pardon tendered to him, and convicted, the court directed his discharge without punishment, not seeing reason to suppose that he had suppressed any facts within his knowledge. *N. A. R.* vol. 3, page 84.

Such powers not vested in assistants.

433. The powers granted by the above provisions to magistrates and joint-magistrates are not extended to the assistants to the magistrates. Reg. X. 1824, sect. 6.

A qualified pardon may be offered to thugs.

434. A qualified pardon, to be ratified by government, and extending only to exemption from capital punishment and transportation and to indulgence in confinement, may be offered to any thug from whom there is reason to expect that useful information may be procured, on condition of his making a full and ingenuous confession. This pardon may be offered either to persons convicted or to those not yet tried; but in the latter case the proposed approver must invariably be committed for trial on the charge of having been guilty of the offence made punishable by Act XXX. 1836; and it is to be explained to him, that, if he pleads guilty to that minor offence, he will not be put on his trial for any capital crime which he may have committed as a thug. Before committal a faithful narrative of his life of crime, entering into as full a detail as possible, is to be placed on record, it being

explained to him at the time that for any wilful omission on his part he will forfeit the qualified pardon. A few thug approvers also should be examined as to his being a real thug. C. O. No. 247 of vol. 2. *L. P.*

435. A similar offer may be made to any dacoit on the condition, 1st, of making a full confession of all the dacoities in which he has been engaged; 2nd, of mentioning truly the names of all his associates in crime, and assisting to the utmost in his power in their arrest and conviction. Such exemption is to be forfeited, if he acts contrary to these conditions; conceals any of the circumstances of the dacoities in which he has been engaged; screens any of his friends or relations; attempts to escape; or accuses any innocent persons. C. O. No. 30 of vol. 3. *W. P.*

And dacoits.

436. But it must be shown that the prisoner was duly warned and made aware that he would be tried, and must endure a sentence of imprisonment for life as a consequence of his confession. Unless he has had such warning he cannot be convicted on a confession which has been obtained by means which amount to an improper influence. Reports *L. P.* 1855, part 2, page 339.

Prisoner must be warned of the consequences of his confession, before he can be convicted on it alone.

437. Persons confined in a criminal jail on a requisition of security for good conduct, cannot be removed to another district for the purpose of being induced to give evidence as approvers before the authorities appointed for the suppression of dacoity. But if such prisoners consent to be so removed for the sake of giving evidence, the nizamat adawlut (a) may sanction their removal. Const. No. 1240.

Security prisoners not to be removed, without their consent, in order to become approvers.

SECTION VI. OF WITNESSES.

438. In any criminal trials or matters cognizable by their respective courts the magistrates, the sessions courts, or the court of nizamat adawlut, are to issue a summons to the witnesses whose attendance and evidence is required, specifying at whose request the summons is issued, and requiring them to appear in the court on a day to be named in the summons, and there to depose concerning the matter in question.* But all summonses to witnesses in criminal cases are to be served by a chuprassy, peon, or other officer of the magistrate, or by a police officer, instead of being delivered to parties to be served on their own witnesses. *Beng. and Ben. Reg. L.* 1803, sect. 2, cl. 1. *Ced. Prov. Reg. VIII.* 1803, sect. 25, cl. 1.

Summons to be issued for the attendance of witnesses, whose evidence is required.

* This is the rule prescribed to the civil courts by sect. 6, *Reg. IV.* 1793, and made applicable to these courts by this Regulation.

439. By section 6, *Reg. IV.* 1793, if a witness so summoned by the civil court does not attend on the day appointed, or attending refuses to give evidence, or to subscribe his deposition, the judge, in the first case, if it be proved to his satisfaction on oath that the witness is material to the cause is to issue an order to the nazir to seize and bring the witness

Non-attendance and recusance.

Power of courts to compel such witnesses to attend and to give evidence.

(a) In the Lower Provinces, apparently, the sanction of government must be obtained.

before the court, and is to impose on such witness not having attended, or refusing to give evidence, a fine not exceeding five hundred rupees, and to commit him to close custody until he consents to give his evidence and sign his deposition. The power of committing to close custody, and fining in a sum not exceeding five hundred rupees, any witness duly summoned, and, after receiving the summons, not attending as thereby required, or, although attending, refusing to give evidence and sign his deposition, is equally vested in the magistrates, and in the courts of sessions and nizamat adawlut. But witnesses attending and refusing to give evidence are, in the first instance, to be committed to custody only; and are to be called upon a second time, after such interval as may by the court be judged sufficient (not being less than one entire day); when, if the witness persists in his refusal to give evidence, he is to be fined in proportion to his situation in life (not exceeding the amount limited), and confined in the jail of the civil court until the fine be discharged, or for such period of imprisonment as may be fixed in lieu of fine under sect. 3, Reg. XIV. 1797; or, if the cause or trial is still depending, until he consents to give his evidence therein; after which, in such case, he is to be released, and the fine remitted. *Beng. and Ben. Reg. L. 1803, sect. 2, cl. 2. Ced. Prov. Reg. VIII. 1803, sect. 25, cl. 2.*

Course to be pursued with recalcitrant witnesses.

In what cases proof is required that the witness is material to the cause.

440. Proof on oath (not the prosecutor's oath exclusively) that the evidence of the witness is material to the cause, is required only in the case of a witness duly summoned, but not attending. In the case of a witness attending but refusing to give evidence, or refusing to sign his deposition, no new proof is to be called for that his evidence is material. Const. No. 159.

If resident in Calcutta, appearance how to be enforced.

* See sect. 3, Act XVII. 1856, *in para. 196.*

Magistrate may compel attendance of any witness.

441. A mofussil magistrate should compel the appearance of witnesses resident in Calcutta, whether British subjects, or natives, by warrant regularly endorsed by one of the judges of the supreme court,* under Act XXIII. 1840. C. O. No. 100 of vol. 4.

442. A magistrate may proceed as above against any witness, whose evidence he requires, although such witness has not been named on oath by the prosecutor or other person as acquainted with the circumstances of the case. Const. No. 78.

Person present in court may be required to give evidence; and to produce documents then and there in his possession.

443. Any person present in court, whether a party or not, may be called upon and compelled by the court to give evidence, and produce any document then and there in his actual possession, or in his power, in the same manner and subject to the same rules, as if he had been summoned to attend and give evidence, or to produce such document; and may be punished in like manner for any refusal to obey the order of the court.(a) Act II. 1855, sect. 25.

Plea of personal disgrace not allowed to excuse attendance.

444. A plea of disgrace attaching to personal attendance in court, urged by a person summoned to give evidence, was held by the sudder dewanny adawlut to be inadmissible. *Carran's Reports*, page 61.

Proclamation to be made before fine.

445. When a witness duly summoned has failed in attendance, and has subsequently evaded the warrant then issued for the seizure of his person; a proclamation should be issued requiring his attendance within a certain period; and if he does not attend within that period, the judge or other officer, should impose a fine not exceeding five hundred rupees, and

(a) This privilege is accorded to the court, and not to parties; and may therefore be refused. *Reports L. P. 1856, part 2, page 6.*

proceed to levy the fine by attachment and sale of his property. But unless the summons has been actually and personally served on such witness, he cannot be proceeded against either by fine, or by the issue of a warrant for his seizure, or by the attachment of his property. Const. Nos. 172, 465, 487, and 698. -

The summons must have been personally served.

446. The showing of a subpoena to a witness while passing by on an elephant, was held by the sudder dewanny adawlut to be a personal and actual service. *Carrau's Reports*, page 111.

Merely showing it to a witness is sufficient.

447. No limitation is fixed for the confinement which the court may award in commutation of fines adjudged in such cases.* The court must exercise its discretion according to the circumstances of each case. A witness fined for refusing to swear is to be discharged on paying the fine, if the suit in which his evidence was required has been decided; or kept in confinement, whether he has paid the fine or not, if the suit be still pending, until he consent to give his evidence on oath as required. Const. No. 110.

Period of imprisonment in lieu of fine unlimited.

* But see section "Of fines."

448. All fines imposed by the magistrate under the above rules, whether for the non-attendance of witnesses duly summoned, or for refusal to give evidence, are to be reported to the session judge; who, in the event of any representation being made to him relative to such fine, is to examine the magistrate's proceedings, and report† to the nizamat adawlut, if the fine appears immoderate, or to have been imposed on insufficient grounds. *Beng. and Ben. Reg. L. 1803*, sect. 2, cl. 4. *Ced. Prov. Reg. VIII. 1803*, sect. 25, cl. 4.

All such fines to be reported to session judge.

† Or may himself reverse or modify under Act XXXI. 1841. See *Appeals*.

449. Magistrates are carefully to prevent any abuses on the part of the subordinate native officers, such as confining witnesses in the *kajut* guard; and to punish such when brought to their notice. C. O. No. 59 of vol. 3, para. 3.

Witnesses are not to be ill treated.

450. A session judge was instructed that parties should not be placed in confinement when they will not tell all they know, in order to bring the facts of a case to light. N. A. R. vol. 6, page 18.

Nor confined when they will not tell all they know.

451. Any person, whether a party to the suit or not, may be summoned to produce a document without being summoned to give evidence; and any person summoned merely to produce a document, shall be deemed to have complied with the summons, if he cause such document to be produced instead of attending personally to produce the same. Act II. 1855, sect. 26.

Persons may be summoned to produce documents; but need not attend personally.

452. When the court has just reason to be satisfied that a witness possesses documents material to the elucidation of the merits of a case, if such witness refuse or neglect to produce them, and fail to assign satisfactory cause, the court is warranted in proceeding against him as a recusant witness in conformity with the spirit of the above rules. Const. Nos. 270 and 757.

Rule to compel the production of account books and other documents.

453. If the attendance of any witness on the part of the prosecutor or the prisoner, whose evidence the law does not allow to be taken by commission, cannot be procured, or if any witness cannot be found, the session judge may postpone the trial, provided there appears sufficient cause for so doing. For the same reason the trial may be postponed a second time. But if the judge and his law officer are of opinion that the evidence of any

In the absence of a witness judge may twice postpone the trial;

witness, who is absent, is not necessary, the trial is to be completed without the evidence of such witness. *Beng. Reg. IX. 1793, sect. 49. Ced. Prov. Reg. VII. 1803, sect. 17.*

and should then
acquit.

454. After the trial has been twice postponed, the prisoners should be acquitted, if the magistrate is unable to lay before the judge evidence sufficient for their conviction. *Const. No. 200.*

But trial need
not be postponed if
witness is confined
for refusing to give
evidence.

455. But it is not necessary that any trial before the sessions court should be postponed for the evidence of a witness confined under the above rules (for refusing to give evidence); unless the judge thinks it proper to postpone it on this account under the discretion vested in him by sect. 49, Reg. IX. 1793; nor is it necessary to postpone the decision of any case, civil or criminal, for the evidence of a witness so confined, beyond such period as appears proper to the court. *Beng. and Ben. Reg. L. 1803, sect. 2, cl. 3. Ced. Prov. Reg. VIII. 1803, sect. 25, cl. 3.*

In commitments.

Witnesses on the
part of the prose-
cution.

456. In cases committed to the sessions, magistrates are to be careful, in taking recognizances from witnesses required to give evidence for the prosecution, that such is not taken from persons who appear to have no knowledge of the case, and whose evidence therefore cannot be requisite on trial. *C. O. No. 304 of vol. 1.*

Prisoner com-
mitted for trial is
to specify any wit-
nesses whom he
desires to have ex-
amined in his de-
fence.

457. When a prisoner is committed, or held to bail, for trial before the sessions, the magistrate is to question him, immediately after passing the order of commitment, whether he wishes to have any witnesses examined in his defence before the sessions court; and in the event of his answering in the affirmative, is to cause a list of the witnesses named by the prisoner, specifying their designations and places of abode, to be taken down and recorded upon his proceedings; or, in the event of the prisoner's replying in the negative, is to cause his reply to that effect to be recorded on his proceedings for the information of the sessions court.* *Beng. Reg. IX. 1796, sect. 2. Ben. ditto, sect. 5. Ced. Prov. Reg. VI. 1803, sect. 32.*

* See section Of
the sessions.

Such persons to
be summoned;

458. The magistrate is to issue the customary process to cause such witnesses to attend at the time fixed for the trial of the persons in whose behalf they are summoned. *Beng. Reg. IX. 1793, sect. 12. Ced. Prov. Reg. VI. 1803, sect. 12.*

and any others
whom he may
name at any time
before the sessions.

459. Also, in the event of any such person, at any time before the sessions, desiring the examination of any witnesses upon his trial, although the same may not have been named by him at the time of his being committed, or held to bail, the magistrate is to be careful to cause the attendance of such witnesses, as well as of those before named, at the time fixed for the trial. *Beng. Reg. IX. 1796, sect. 3. Ben. ditto, sect. 5. Ced. Prov. Reg. VI. 1803, sect. 33.*

Lists of wit-
nesses summoned
to be sent with
the calendar to
sessions.

460. By section 14, Reg. IX. 1793, (*Ced. Prov. sect. 14, Reg. VI. 1803,*) the magistrate is required to submit to the sessions, with the proceedings on each trial, lists of the witnesses summoned at the requisition of the prosecutor or prisoner, specifying those who are in attendance, and such as are absent with the cause of their non-attendance. These lists are to be accompanied with the original returns made to the magistrate by the nazir, and person deputed on his part to serve the summons on any absent witness; and the nazir, and person so deputed, are to be kept in attendance on the sessions court to answer any interrogatories

which the judge may put to them. And the judge is expected in every instance to make such enquiry as to satisfy himself, as well as the nizamat adawlut in referrible cases, that all due measures have been taken to cause the attendance of the whole of the witnesses both on the part of the prosecutor and of the prisoner. *Beng. Reg. IX. 1796, sect. 4. Ben. ditto, sect. 5. Ced. Prov. Reg. VI. 1803, sect. 14.*

And judge is to see that due measures have been taken to cause the attendance of all.

461. In the event of the absence of witnesses for the defence, it is the duty of the session judge to issue such orders as may appear calculated to secure their appearance, if the prisoners are still desirous of having their evidence. In a case in which this was not done, and the case was closed without further enquiry, the proceedings were returned that the omission might be supplied. *N. A. R. vol. 5, page 94.*

And to issue orders calculated to secure their appearance.

462. On a trial before the sessions, if the prosecutors or witnesses are Mahomedan or Hindoo women of a rank and situation in life, which, according to the customs and prejudices of the country, would render it improper to compel them to appear in a court of justice, and if their evidence is deemed necessary, and the case is of such a nature as to admit of its being taken by commission, the judge is not to require the attendance of such women, but is to depute persons to take their evidence. *Beng. Reg. IX. 1793, sect. 48. Ced. Prov. Reg. VII. 1803, sect. 16.*

If witnesses are Mahomedan or Hindoo ladies of rank.

463. It is held as a general rule, that the examination of absent witnesses cannot be received in a criminal trial, and that their personal attendance is necessary. *Const. No. 1280.*

Examination of absent witnesses.

464. And the evidence of witnesses for the prosecution in a sessions trial cannot be taken except in the presence of the accused. *Const. No. 658. N. A. R. vol. 1, page 300.*

As a general rule such is not available on a criminal trial;

465. But the evidence of any person on oath before the magistrate, duly attested and proved, would be available as evidence on the trial in case of the death or unavoidable absence of such person. *C. O. No. 42 of vol. 3.*

except in the case of death or unavoidable absence.

466. It is lawful for any court and the several judges thereof, in every civil proceeding depending in such court, upon the application of any of the parties to such proceeding, to order the examination, upon interrogatories or otherwise, before any officer of any such court, or other person or persons named in such order, of any witnesses within the jurisdiction of the court where the proceeding is depending,—or to order a commission to issue to any subordinate court for the examination of such witnesses upon interrogatories or otherwise,—or to order a commission to issue to any other court for such examination of witnesses at any place out of such jurisdiction,—and to give such directions for taking such examinations as appear reasonable and just. Any court to whom such commission is directed, is to take the examination in open court in all cases, where witnesses are able to attend in court, and are not exempted from attendance by law, absolutely, or at the discretion of the court. Under special circumstances such commissions for taking evidence out of jurisdiction, may be directed otherwise than to a court. *Act VII. 1841, sect. 2.*

Commission to be issued to officer of court, or other person, within jurisdiction, or to a subordinate court;

or to any court beyond jurisdiction;

or to any person beyond jurisdiction.

467. When an order is made for the examination of witnesses within the jurisdiction of the court, such court or any judge thereof may command the attendance of any person to be named in the order, and may direct the attendance of any such person to be at his own place

If within jurisdiction, the attendance of any witness may be

required at the court or elsewhere.

Disobedience on the part of the witness summoned.

Re-imbursement of expenses of witness.

Examinations to be taken on oath.

False evidence therein perjury.

Court to satisfy itself with the reason for the non-attendance of witness;

and to enquire for his place of residence, and the nearest court thereto.

The commission to be directed to such court; but if doubt, to judge of district;

who may direct it to subordinate court.

Deposition so taken not evidence without consent unless deponent is beyond jurisdiction, or dead, or sick, or distant more than fifty coss, or exempted from personal appearance, or at discretion of court even though such cause has ceased.

If deposition is duly certified, proof of the signature of such certificate is not required.

Such commissions may be executed within limits of supreme court; and are to be directed to court of requests.

They may also be executed within foreign territories.

of residence or elsewhere, if necessary or convenient, and to produce all necessary documents and papers. Wilful disobedience to any such order is to be deemed a contempt of court, and is punishable as in other cases of refusing or neglecting to give testimony. Every person whose attendance is required under this Act is entitled to the like payment for expenses and loss of time as upon attendance in court in cases where such expenses are allowed. Act VII. 1841, sect. 3.

468. All such examinations are to be taken on oath, or affirmation, where an affirmation is admissible or required. And any person wilfully and corruptly giving any false evidence, or procuring such to be given, is to be deemed guilty of perjury, or subornation thereof. Act VII. 1841, sect. 4.

459. Before issuing any order or commission under this Act, the court or judge is to be satisfied that there is good reason for believing that the witness will be unable to attend at the usual time for examination by reason of absence from the jurisdiction, sickness, or other cause allowed by law; and is to make particular enquiry as to the residence of the witness, and as to the court (of the same or inferior degree) which is nearest to such place of residence; and the commission is ordinarily to be directed to such court of equal or inferior degree as may most conveniently execute the same. But, if there is doubt as to the most convenient court, the commission may be directed to the judge having jurisdiction in the district, within which it is to be executed; and such judge may at his discretion execute the commission in his own court, or direct it to any subordinate court in his district, which is to have the same effect as if it had in the first instance been so directed. No deposition taken under this Act, except as hereinafter mentioned, is to be read in evidence without the consent of the party against whom it is offered, unless it is proved that the deponent is beyond the jurisdiction of the court,—or dead,—or unable from sickness or infirmity to attend to be personally examined,—or distant without collusion more than fifty coss,—or exempted by law absolutely or at the discretion of the court from personal appearance,—or unless the court at its discretion dispenses with the proof of any of the above circumstances,—or authorizes the deposition of any witness being read in evidence, notwithstanding proof that the causes for taking such deposition have ceased at the time of reading it; and after the witness has been produced and has delivered his testimony, the court may at its discretion authorize the reading of the deposition. All depositions taken under this Act, being duly certified, may be read at the discretion of the court without proof of the signature to such certificate. Act VII. 1841, sect. 5.

470. Any court, other than one of Her Majesty's courts, or any judge thereof, may issue such commissions and orders to be executed within the local limits of the jurisdiction of Her Majesty's court; and all such commissions or orders, except when directed otherwise than to a court, are to be directed to a court of requests having jurisdiction within such limits or any part thereof. Act VII. 1841, sect. 6.

471. Such commissions and orders may be issued for execution within the territories of princes and states in alliance with the Company; and all persons therein, being in the

service of the Company, are required to pay obedience thereto; and for disobedience thereof, on being found within the jurisdiction of the court or judge issuing such commission or order, are punishable in like manner as if such offence had been committed within such jurisdiction; and for giving false testimony under the same are punishable by any court of justice within the territories of the Company. Act VII. 1841, sect. 7.

Punishment of disobedience or perjury on the part of persons in the service of the Company.

472. When the evidence of an absent witness is required out of the jurisdiction of the court, in which the proceedings for which the evidence is wanted are pending, and the commission is directed to any court, such court may punish the wilful disobedience of any such order as aforesaid as a contempt, notwithstanding it has not itself made such order, with the same amount of punishment as in other cases of refusing or neglecting to give testimony. Act VII. 1841, sect. 8.

Disobedience of orders of court executing commission.

473. When the evidence of a prisoner confined in another district is indispensable, the court requiring it is to request the magistrate of the district in which the prisoner is confined to send him to such court, informing the nizamut adawlut of the step thus taken; and it is competent to a magistrate, on such emergent requisition, to forward the prisoner, reporting at the same time, for the information of the nizamut adawlut, his compliance with the requisition, and eventually the prisoner's return to his jail. C. O. No. 58 of vol. 3, *W. P.*

When the evidence of a prisoner in another district is required.

474. The magistrates are to pay to all prosecutors and witnesses, who appear to be actually in need of such assistance, a daily allowance of two annas each, during their attendance on the sessions, and the same allowance for as many days as in their opinion may be sufficient for such prosecutors and witnesses to come from, and return to their respective homes. *Beng. Reg. IX. 1793, sect. 26. Ced. Prov. Reg. VI. 1803, sect. 26.*

Indigent prosecutors and witnesses.

Diet money to be paid daily.

475. This allowance is not to be given indiscriminately to all prosecutors and witnesses in attendance on the sessions; but is to be restricted to such persons, attending the sittings of the session judge, as are really indigent, especially when they have been long detained from their usual occupations. C. O. No. 91 of vol. 1.

But only to those really indigent.

476. All witnesses to confessions, whether before the police or magistrates, are to have their expenses paid for attendance on the sessions trial, at the rate laid down in sect. 26, Reg. IX. 1793. C. O. No. 74 of vol. 4. *L. P.*

Witnesses to confessions to be always paid.

477. The magistrates, in paying the prescribed allowance to indigent prosecutors and witnesses, are to be careful to ascertain the actual attendance of the parties on the court; and are to establish such checks, as appear most effectual, to guard against overcharge by the native officers. (a) The bills for diet money are to be countersigned by the judge. C. O. No. 75 of vol. 1.

Magistrate to ascertain actual attendance.

478. At the commencement of a trial before the sessions, the judge is to ascertain what witnesses mentioned in the calendar are in attendance, and to make a mark opposite the names of the absentees: and, on the termination of the trial, having demanded from the magistrate's nazir a statement of his account for the diet money, he is to have the persons

Check to be established by judge.

(a) A form of a register of subsistence money has been prescribed for the use of officers in charge of sub-divisions. See Appendix B. No. 29.

stated to have received it brought before him, and to direct whatever may be due to them to be paid in his presence. C. O. No. 125 of vol. 2.

PETTY CASES.

No process to be issued without deposit of diet money.

479. No process is to be issued for the attendance of witnesses on any charge of adultery, fornication, calumny, abusive language, slight trespass, or inconsiderable assault, unless the person by whom such charge is preferred, deposits in the hands of the nazir a sufficient sum for the maintenance of the witnesses who may be summoned on his application (being persons residing at a greater distance than five coss from the magistrate's cutcherry) for their support, at such rate as may be fixed by the magistrate in each case, not being however in any instance less than one anna, or more than three annas, per day for each witness. Reg. III. 1812, sect. 2, cl. 1.

Magistrate may regulate the amount of diet-money to be deposited before taking out process.

480. It is lawful for magistrates to regulate the amount of diet-money required for witnesses in petty cases, with reference to the probable period such witnesses may have to be in attendance; and in the event of prolonged detention of witnesses to direct the deposit of any further sum which to the said magistrates may seem requisite. Act VII. 1846.

When diet money is to be lodged.

481. This rule does not require the subsistence money of witnesses to be lodged, until the prosecutor is desirous of taking out process to procure their attendance;—and the witnesses should not be summoned, until the magistrate is prepared to take up the case. Const. No. 221.

Diet money to be paid only for the period of absence from home.

482. If the detention of the witnesses from their homes is less than the period fixed, they are entitled to subsistence only during the period of their absence in attending at the magistrate's cutcherry, in proceeding thither, and in returning to their homes; and the surplus of the deposit is to be returned to the prosecutor. Reg. III. 1812, sect. 2, cl. 2.

Further deposit to be made at the expiration of the fixed period, or the case to be dismissed.

483. On the other hand, if the detention is for more than the period fixed, the prosecutor is to deposit, at the expiration of it, such further sum as is necessary for the subsistence of the witnesses during a further prescribed period, until the case is disposed of, or the witnesses discharged. If the prosecutor fails to make the prescribed deposit, the complaint is to be immediately dismissed. Reg. III. 1812, sect. 2, cl. 3.

These rules are applicable only to petty offences; in other cases government to pay.

If prosecutor evades payment by misrepresentation of the case.

484. The foregoing provisions do not apply to cases of *mayhem*, actual affrays, or tumultuary assemblies of the people, requiring the immediate interposition of the police for the maintenance of public tranquillity. In such cases, as well as in heinous offences, the subsistence of indigent prosecutors and witnesses is to be defrayed by government. If, however, a prosecutor in any instance, by an exaggerated and perverted representation of the case, procures process to be issued against any person for any such crime or misdemeanor, and it appears on inquiry that the case is nothing more than a trifling offence, such prosecutor is to be held accountable for whatever sum appears due for the subsistence of his witnesses on the principles stated above. Reg. III. 1812, sect. 2, cl. 4.

Nazir to keep account of such sums.

485. It is the duty of the nazir to keep an accurate and particular account of all sums received and disbursed by him on account of the subsistence of witnesses under these rules, which is to be inspected monthly by the magistrate or his assistant. Reg. III. 1812, sect. 2 cl. 5.

486. Magistrates are to conform strictly to the foregoing rules; and are to be careful to ascertain that indigent witnesses are, on all occasions, supported either by the prosecutor or by the state, during the time of their detention from their homes, whether the case is pending before the session judge or otherwise. All criminal charges are to be speedily disposed of, so that witnesses may be detained for as short a period as is practicable at the sudder station. C. O. No. 59 of vol. 3.

Magistrate to conform strictly to the above rules.

Indigent witnesses to be supported in all cases whether before the sessions or otherwise.

487. Magistrates are required to prevent the prolonged detention of witnesses, by taking care that no unnecessary delay occurs in their examination by the mohurirs, or in the perusal of their depositions and cross-examination by the magistrate. To this end all magisterial officers are required to keep a diary, in prescribed form,* which is to be prepared and filled up according to directions contained therein. C. O. No. 194 of vol. 3.

Detention of witnesses.

* v. *Appendix B.* No. 13.

488. To have all the chalans of witnesses summoned in criminal cases brought before the magistrate instead of their being, as is usual, taken to the nazir; and to receive so many chalans only as could probably be disposed of during the day, postponing any others presented by the witnesses till the next day; is a deceptive and wrong method of making the despatch of business appear greater than is actually the fact, and is strongly condemned. C. O. No. 1559, December 18th, 1854. *W. P.*

The diary should show truly the number of witnesses in attendance.

489. Subpoenas to prosecutors and witnesses are to be drawn out according to prescribed form,* and to be served by a single burkundaz. Darogahs are strictly prohibited from delivering summonses to parties or their agents, to be served on their own witnesses. Reg. XX. 1817, sect. 23, cl. 1.

Police.

Subpoenas how to be served.

* v. *Appendix A.* No. 9.

490. Prosecutors and witnesses, whose attendance is necessary at the criminal courts, are to execute mochulkas † before the police officers to appear before the magistrate on a specific day, which is to be the day whereon the accused is bound to appear, if admitted to bail, or expected to arrive at the magistrate's place of residence, if forwarded under custody:—the police officer, in whose presence the mochulka is executed, is to forward it with his report to the magistrate; and is to deliver to the prosecutor or witness a despatch addressed to the magistrate and drawn out in prescribed form,‡ which such person is to deliver himself to the magistrate, unaccompanied by any officer of police. Reg. XX. 1817, sect. 23, cl. 2.

Mochulkas to appear before magistrate.

† v. *Appendix A.* Nos. 38 and 39.

‡ v. *Appendix A.* No. 40.

491. Such mochulkas may be taken on plain paper. Const. No. 679. Reg. X. 1829, sched. B, art. 1.

To be taken on plain paper.

492. Police officers are prohibited from subjecting prosecutors to any degree of restraint, except when their complaints appear on inquiry to be false and malicious.§ Reg. XX. 1817, sect. 23, cl. 3.

Prosecutors not to be subjected to restraint.

§ v. ¶ 391.

493. Police officers are not to subject witnesses to any restraint or unnecessary inconvenience, nor to require them to give security for their appearance; but if a witness refuses to attend, or to execute the recognizance directed above, the police officer presiding at the thana may forward him under custody to the magistrate's court. Reg. XX. 1817, sect. 23, cl. 4.

Witnesses not to be subjected to restraint.

Maltreatment.

494. Any species of maltreatment inflicted on a witness by a police officer, landholder, or farmer, or by any other person whatever, with a view to procure information, subjects the offender to exemplary punishment on conviction before the magistrate or sessions court. Reg. XX. 1817, sect. 19, cl. 2.

Power to compel attendance.

495. Police officers do not possess authority to compel the appearance before them of persons acquainted with the commission of offences. Const. No. 189.

SECTION VII. OF OATHS.

The Mahomedan and Hindoo religions do not prohibit the taking oaths.

496. The kazi-ul-kuzat and muftis of the nizamat adawlut have declared that there is no prohibition against an oath to the truth being taken by Mussulmans in any case; although it is not required by the Mahomedan law to give validity to evidence in judicial cases. And from the report of the pundits of the sudder dewanny adawlut, it appears, "that the Hindoo law not only authorizes, but requires, the oaths of witnesses in civil and criminal cases; and prescribes the form in which oaths may be administered to persons of various tribes, regard being had to the importance of the matter in dispute: that no person of whatever rank is prohibited from taking an oath in a court of justice; nor is there any objection grounded on law or usage against administering the oaths prescribed by law; that Brahmins, rigidly observant of the duties of the priesthood, are exempted by one ancient author (Gotum) from taking an oath, and may therefore be heard as witnesses upon their simple affirmation; but that the other authorities of the law, which do not contain this exemption, prevail over the single text of Gotum, and declare no dispensation in favor of any description of persons, and pronounce no form of oath sinful, excepting as far as the soodra cast is restricted from handling certain idols; and that the form of swearing by the water of the Ganges, and by copper and toolsy, is virtually sanctioned by many shasters; but that other prescribed forms are of equal validity; and that all oaths, made by laying the hand on any symbol or image of the deity, have the same obligation." *Beng. and Ben. Reg. L. 1803, preamble. Ced. Prov. Reg. VIII. 1803, sect. 25, cl. 1.*

Form of affirmation to be made by Hindoos and Mahomedans.

497. Instead of any oath or declaration formerly authorized or required by law, every individual of the Hindoo or Mahomedan persuasion is to make affirmation to the following effect:—"I solemnly affirm in the presence of Almighty God, that what I shall state shall be the truth, the whole truth, and nothing but the truth." Act V. 1840, sect. 1.

Mode of making.

498. It is not required that the deponent should sign his name to any written affirmation; he should merely read it out in court, or it should be read out to him and repeated by him before giving his deposition; and at the head of his written deposition it should be stated that he was sworn according to the provisions of Act V. 1840. Translations of the affirmation are given in Bengalee and Urdu for Mahomedans and Hindoos;* if it is

Translations.

necessary to use the Bengalee form for Mahomedans, the term used to designate the Supreme Being, by persons of that persuasion, is to be substituted. C. O. L. P. No. 44, W. P. No. 48 of vol. 3.

499. The evidence of witnesses should not be taken down prior to the administration of the solemn declaration under Act V. 1840; the wording of which, "what I *shall* state shall be truth," is rendered unmeaning, if it be administered *subsequently*, and not *previously* to the record of the deposition. C. O. No. 104, January 27th, 1854. W. P.

Affirmation to be made before evidence is written.

500. The word "huluf," which means an oath, is not to be used as the translation of the affirmation, substituted for an oath by Act V. 1840, in recording the evidence of witnesses in the criminal courts. The affirmation is to be rendered by the corresponding term "ikrar." C. O. No. 93 of vol. 4, W. P. The prescribed Bengalee term is "protigya." Reports L. P. 1852, part 1, page 70.

Translation of word affirmation.

501. Police officers are in the same manner to make use of the same form in all cases, wherein they are authorised by the regulations to take a deposition on oath. C. O. No. 117 of vol. 3.

Police officers to use the same form.

502. A police mohurir has no power to administer oaths except in the absence of the darogah; and the latter has no authority to delegate his power of administering oaths when present. N. A. R. vol. 1, page 386.

Police mohurir cannot administer oath.

503. If any person, making such affirmation, wilfully and falsely states any matter or thing, which if sworn to before the passing of this Act would have amounted to perjury,—he is to be subject in all courts to the same punishment, to which persons convicted of perjury were subject before the passing of this Act. Act V. 1840, sect. 2.

Such affirmation has the same force as an oath in regard to perjury.

504. Any person causing or procuring another to commit such offence is to be subject in all courts to the same punishment, as persons convicted of subornation of perjury before the passing of this Act. Act V. 1840, sect. 3.

And subornation of perjury.

505. The punishment for perjury is not incurred, when the oath has been taken before a person not duly authorized to administer it; or in a place in which a court cannot legally be held; or when the deponent has been improperly required to give evidence on oath. See chapter on perjury.

506. This Act does not extend to any declaration or affirmation made in any of Her Majesty's courts of justice. Act V. 1840, sect. 4.

Act does not extend to H. M.'s courts of justice.

507. The words in sect. 4, Act V. 1840, "Her Majesty's courts of justice" are not to be deemed to mean or extend to the courts of the justices of the peace. Act II. 1847.

Justices of peace are to administer oaths according to Act V. 1840.

508. The commanding officer of any military station occupied by troops in the service of the Company, is competent to administer, within the limits of such station, any oath which a justice of the peace is competent to administer within the said territories; and such oath is of the same effect as if taken before a justice of the peace. Act IX. 1836.

Commanding office of military station may administer.

509. A military court of inquiry has no power to administer an oath. N. A. R. vol. 3, page 171.

But not military court of inquiry.

SECTION VIII.

OF EVIDENCE.

Rules for examination.**By whom.**

Judge, and native judicial officers.

Magistrates.

Must be in the presence of the presiding officer.

LOCALITY.**LANGUAGE.**

According to the wish of the deponent.

But must be in that in which delivered.

European witness.

CERTIFICATION.

Deposition must be read over to witness.

510. Every witness or prisoner examined by a session judge is to be examined exclusively and entirely in the presence of that officer; and the same rule is applicable to all native judicial officers entrusted with criminal jurisdiction. C. O. No. 220 of vol. 2, para. 2.

511. A pressure of public business may occasionally oblige magistrates, joint magistrates, and their assistants, to empower their native officers to record the depositions of parties in cases before them; but such proceedings are to be confined entirely to matters of minor importance. The examinations of prisoners are in all cases to be taken exclusively and entirely before the magistrate, or other officer, without any preliminary or partial examination before a native officer; and in all instances depositions are to be taken *in the presence* of the European officer presiding. C. O. No. 58 of vol. 1; and No. 220 of vol. 2, para. 4.

512. A deposition taken on oath in a private dwelling is illegal, and a charge of perjury cannot be sustained on such a deposition. Const. No. 627.

513. All examinations of parties and witnesses are to be taken down in the language and character, in which the person examined may desire to have it recorded. *Beng. and Ben. Reg. IV. 1797, sect. 7, cl. 2. Ced. Prov. Reg. VII. 1803, sect. 18, cl. 1.*

514. The rule originally prescribed in sect. 16, Reg. IX. 1793, that all examinations and depositions are to be written in the language in which the deponents are most conversant, is superseded by the above provision. Const. No. 204.

515. But officers are strictly prohibited from taking down the examination of parties or witnesses in any other language than that in which it is delivered. C. O. No. 220 of vol. 2, para. 7.

516. The deposition of an English witness must be recorded in English, and a translation of it prepared by the court and annexed to it. Const. No. 1035.

517. The person examined, whether party or witness, is to be allowed to read the examination when finished; or, if unable to read, it is to be read to him; after which, if he admit the record to be correct, he is to affix his name or mark to it; and the officer, before whom it is taken, is to certify the same under his official signature on the original record; as well as on a translation thereof, to be annexed to the original, if it has not been taken in the vernacular. *Beng. and Ben. Reg. IV. 1797, sect. 7, cl. 2. Ced. Prov. Reg. VII. 1803, sect. 18, cl. 1.*

518. A person charged with perjury was acquitted because his deposition was not read over to him, and because it was not authenticated, under the preceding rule. Reports *L. P.* 1853, part 1, page 560.

519. No signature, or mark in lieu of signature, of a witness, is to be attached to the record of his deposition, until after such deposition has been read over to him. It is then to be attached *immediately below* such deposition, and is to be repeated on every occasion of the re-examination of the witness. C. O. No. 74 of vol. 4, *L. P.*

He must sign at the end.

520. Native judicial officers entrusted with criminal jurisdiction are to certify, at the end of each deposition or examination, in the Persian language, in the mode indicated in the note,(a) that the same has been taken in their presence. C. O. No. 220 of vol. 2, para. 5.

Native judicial officers.

521. The same rule is applicable to magistrates and other European officers; but in cases of a heinous nature, and in all cases in which a commitment may be made, the deposition or examination is to be certified in the English language, and in the following manner: for a witness or prisoner—"Taken before me (or taken before A. B. serishtadar, and duly explained in my presence) this 27th day of January 1837.—C. D. Magistrate." C. O. No. 220 of vol. 2, para. 6; and No. 11 of vol. 1.

Magistrates.

522. The following admonition is to be repeated to witnesses in the language which they best understand, immediately after they are sworn:—"In delivering your evidence under the oath now administered, you are required to declare the truth, the whole truth, and nothing but the truth! You are carefully to distinguish what you personally know as an eye-witness, or otherwise, from what you have heard from others; and are solemnly bound to answer all questions put to you on the trial before the court, without any regard to the prosecutor or prisoner, to the best of your information and belief." *Beng. and Ben. Reg. IV. 1797, sect. 7, cl. 6. Ced. Prov. Reg. VII. 1803, sect. 18, cl. 5.*

EXAMINATION.
Admonition to be given to witness.

523. Judges are to record upon their proceedings that the foregoing admonition has been repeated to the witnesses as above directed. They are also to remind witnesses of the admonition, whenever in the course of their examination there may appear occasion for it. C. O. No. 16 of vol. 1.

524. The court called the attention of the magistrates to an evil of a serious nature, which is to be observed in the manner in which evidence is often recorded. Several witnesses are brought forward to prove a particular point in a case, and their depositions are taken down by the same mohurir: when these depositions are read over, they will be found to be nearly identical, not merely as to the point at issue, but in the order of the narrative, the form of expression, and the description of the circumstances under which each witness happened to be present. The court request the serious attention of the magisterial authorities to this point, and they desire that every endeavour may be used to have the

Depositions should be recorded in the actual words of the deponent.

(a) من—که صدر امین اعلیٰ (یا صدر امین یا مولوی یا پندت) عدالت ضلع فلان ام امروز
روبروی من زبانبندی فلان گواه (یا اظهار مدعی یا مدعی علیه) گرفته شد تحریراً فی التاریخ
فلان سنہ فلان

depositions recorded on each occasion in the actual words of the deponent. Magistrates will, however, find their time well employed, if, previously to the examination of the witness in any case, they make themselves sufficiently acquainted with the facts of the charge, so as to point out to the mohurir, who records the depositions, what evidence is material, thus enabling him to reject the garrulous and irrelevant histories of immaterial events, which are too often entered as part of the deposition. C. O. No. 16, June 21, 1855.

Leading questions to be avoided.

525. In the examination of witnesses, leading questions, suggesting an answer, or having a tendency to such suggestion, are to be avoided, and the interrogatories to them are to be proposed in such general terms as may bring forth all the information they possess, and lead to a discovery of the truth. With this view the parties are to be allowed to cross-examine the witnesses, and the presiding officer should also cross-examine them, when necessary. *Beng. and Ben. Reg. IV. 1797, sect. 7, cl. 3. Ced. Prov. Reg. VII. 1803, sect. 18, cl. 2.*

Cross-examination.

Particulars regarding deponent to be noted.

526. All examinations of parties and witnesses, besides the name of the person examined, are to specify the name of his or her father, and if a married woman the name of her husband, also the religion, caste, profession, and age; and the village and pergunnah in which they reside. *Beng. and Ben. Reg. IV. 1797, sect. 7, cl. 4. Ced. Prov. Reg. VII. 1803, sect. 18, cl. 3.*

Rule regarding circumstantial evidence.

527. When any stolen property, or instruments of violence stated to have been found upon the prisoners, or in their houses, are produced, the prosecutor and any witnesses brought to give evidence thereupon, are to be carefully examined relative to the identity of such property, or instruments recognized by them, and the circumstances of their being found. The principle of this rule is to be applied in all instances of circumstantial evidence to which it is applicable. *Beng. and Ben. Reg. IV. 1797, sect. 7, cl. 5. Ced. Prov. Reg. VII. 1803, sect. 18, cl. 4.*

Party allowed to cross-examine and discredit his own witness.

* See para. 584.

528. The party at whose instance a witness is examined may, with the permission of such* court or person, cross-examine such witness to test his veracity, in the same manner as if he had not been called at his instance, and may be allowed to show that the witness has varied from a previous statement made by him. *Act II. 1855, sect. 30.*

Former statement admissible to corroborate a witness.

529. In order to corroborate the testimony of a witness, any former statement made by such witness, relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, shall be admissible; and for that purpose a copy of any deposition or statement taken before any court, judge, justice of the peace, magistrate, or person lawfully exercising the powers of a magistrate, or before a commissioner or superintendent for the suppression of thuggee or dacoity, in the discharge of his duty, shall, if certified by such court, judge, or other officer above-mentioned, under his hand or the official seal of the court, or under the hand or official seal of such judge, to be a true copy of such deposition or statement, without further proof, be

received as *prima facie* evidence that such deposition or statement was made, and that it was made at the time and place, and under the circumstances, if any, which shall be stated in the certificate or on the face of the deposition or statement. Act II. 1855, sect. 31.

530. A witness shall not be excused from answering any question relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend, directly or indirectly, to criminate such witness, or that it will expose, or tend, directly or indirectly, to expose such witness to a penalty or forfeiture of any kind. Provided that no such answer, which a witness shall be compelled to give, shall, except for the purpose of punishing such person for wilfully giving false evidence upon such examination, subject him to any arrest or prosecution, or be used as evidence against such witness in any criminal proceeding. Act II. 1855, sect. 32.

Witness bound to answer crimi-
nating questions.

But such evi-
dence cannot be
used against him.

531. But he may be arraigned on a crime admitted in the deposition, provided it be proved by other evidence. N. A. R. vol. 2, page 14. Reports *L. P.* 1852, part 1, page 695.

But that would
not prevent his in-
dictment on other
evidence.

532. A witness in any cause may be questioned as to whether he has been convicted of any felony or misdemeanor, and upon being so questioned, if he either denies the fact or refuses to answer, it shall be lawful for the opposite party to prove such conviction. Act II. 1855, sect. 33.

Witness may be
examined as to con-
viction for felony.

533. A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject matter of the cause, without such writing being shown to him; but, if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him. Provided always, that it shall be competent for the judge, at any time during the trial, to require the production of the writing for his inspection, and he may thereupon make such use of it for the purposes of the trial as he shall think fit. Act II. 1855, sect. 34.

Cross-examina-
tion as to previous
written statements;

and use of them by
judge.

534. A witness shall be allowed before any such* court or person aforesaid to refresh his memory by any writing made by himself or by any other person at the time when the fact occurred, or immediately afterwards, or at any other time when the fact was fresh in his memory, and he knew that the same was correctly stated in the writing. In such case the writing shall be produced and may be seen by the adverse party, who may, if he choose, cross-examine the witness upon it. Act II. 1855. sect. 45.

Refreshing me-
mory of witness.
* See para. 684.

535. Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the court, refer to a copy of such document, provided the court or person, under the circumstances, be satisfied that there is sufficient reason for the non-production of the original. Act II. 1855, sect. 46.

Court may per-
mit a copy of docu-
ment to be used to
refresh memory.

536. Session judges are to be careful to notice on their proceedings any material difference between the depositions of the same witnesses before them and the magistrates; and are to question the witnesses thereupon and to record their answers; but the depositions taken before the magistrate are not to be read before the sessions court in the presence of

If witness varies
in his depositions
before magistrate
and judge.

Deposition before
magistrate not to

be read in sessions court, till witness has given evidence.

the persons who gave the same, until they have been re-examined before the sessions court. *Beng. and Ben. Reg. IV. 1797, sect. 7, cl. 7. Ced. Prov. Reg. VII. 1803, sect. 18, cl. 6.*

Witness for defence must be examined;

537. A judge has no authority to decline examining the witnesses of a defendant, of whatever nature their evidence may be, though he attaches no weight to their testimony. *N. A. R. vol. 6, page 12.*

and cross examined if necessary.

538. Witnesses for the defence, like other witnesses, should be examined on the points to which they are summoned to testify, and cross-examined regarding statements made by them in answer to the prisoner's questions, if their statements appear to require it; and their personal knowledge of the circumstances which they are cited to prove should be closely scrutinized. *C. O. No. 2 of vol. 4. L. P. See section "of the sessions."*

Prisoner objecting to his own witnesses.

539. If a prisoner objects to examine his own witnesses on the ground of their having been tampered with by the prosecutor, the session judge ought not to examine them. *Const. No. 1203. N. A. R. vol. 5, page 115.*

Evidence for prosecution must be taken in presence of accused.

540. The evidence of witnesses for the prosecution, even in proof of the prisoner's confession, in a trial in the sessions court cannot be taken in the absence of the accused. *Const. No. 658. N. A. R. vol. 1, page 300. See section "of the sessions."*

In a magistrate's court prisoner may recall witnesses for prosecution.

541. Whenever a defendant, summoned after the taking of evidence for the prosecution, makes, upon his appearance, in whatever manner, a request that the witnesses, who were so examined before the issue of the summons, and before his attendance, should be called for, in order that they may be further examined before himself, whether as to the point of his recognition and identification, or as to any other point, it is the plain duty of a magistrate again to send for those witnesses, and to have them re-examined, in the prisoner's presence, as to any matter which he may indicate. And, *semble*, it is unnecessary to re-call the witnesses, if the defendant does not make such request. *Reports L. P. 1852, part 2, page 663.*

Witness accused of perjury should be examined on the charge without oath.

542. A witness accused of having given a false deposition on oath cannot be examined on oath as to the truth of such accusation, and then committed for giving false and contradictory statements; his defence should be taken without oath on a charge of perjury. *N. A. R. vol. 6, page 91.*

Strangers may take notes of evidence.

543. It is not a criminal offence, to take notes of the deposition of a witness under examination and to communicate them to other witnesses in attendance. *N. A. R. vol. 6, page 210.*

Competency.
Former conviction.

544. No person, by reason of any conviction for any offence whatever, is incompetent to be a witness in any stage of any cause, civil or criminal, before any court in the territories of the East India Company. *Act XIX. 1837.*

545. If convicts are required to give evidence they should be examined on oath. *N. A. R. vol. 5, page 37.*

Witness previously convicted on the same charge.

546. Under the provisions of the above Act, the conviction of a person of a criminal offence cannot be considered as a bar to his giving his evidence against or in favor of his

supposed accomplices in the same crime(a); but it rests of course with the judge to place such reliance on the evidence as it appears to deserve. Const. Nos. 1117 and 1173.

547. So, it was considered no sufficient reason for rejecting evidence to the defence, that the witnesses named by the prisoner had been accused before the magistrate of participating in the offence charged, but released by that officer. N. A. R. vol. 2, page 413. Reports *W. P.* 1856, part 1, page 31.

or previously
accused and ac-
quitted.

548. There is no legal impediment to the admission of a person to give evidence against his accomplices whether he be convicted and sentenced, or whether the trial as regards him is under reference to the nizamat adawlut. Reports *L. P.* 1862, part 2, pages 383 and 491.

Evidence of ac-
complices is always
admissible.

549. Of three persons who committed a murder in concert, one was apprehended at the time; and, having been convicted on circumstantial evidence only, was sentenced as an accessory to transportation for life. Subsequently the other two were arrested, and being convicted on the direct evidence to the murder of the accomplice already under sentence, in addition to the circumstantial evidence produced at the former trial, they were sentenced to death. Reports *L. P.* 1855, part 2, page 582.

Capital sentence
had on the evidence
of an accomplice
previously con-
victed.

550. The following persons only shall be incompetent to testify: 1. Children under seven years of age who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly. 2. Persons of unsound mind, who, at the time of their examination, appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly; and no person who is known to be of unsound mind shall be liable to be summoned as a witness, without the consent previously obtained of the court or person before whom his attendance is required. Act II. 1855, sect. 14.

Persons incom-
petent to testify.

551. Any person who by reason of immature age or want of religious belief, or who by reason of defect of religious belief, ought not, in the opinion of such court* or person, to be admitted to give evidence on oath or solemn affirmation, shall be admitted to give evidence on a simple affirmation, declaring that he will speak the truth, the whole truth, and nothing but the truth. Act II. 1855, sect. 15.

Children and pre-
sons of defective
religious belief to
testify on simple
affirmation.

* See para. 564.

552. In all such cases the alleged and apparent age of the person, and the queries and answers which have led to the conclusion that he is or is not, of capacity to be sworn, are to be fully and exactly recorded upon the proceedings. C. O. No. 23, November 24, 1855, *L. P.*, and No. 1 of vol. 2.

Grounds to be
stated, on which
witnesses are ad-
mitted on simple
affirmation.

553. Such declaration should be recorded in the same way as the administration of an oath is set forth, at the commencement of the deposition. Reports *L. P.* 1856, part 1, page 869.

554. The provisions in the last preceding section as to witnesses shall apply to testimony given by affidavit or otherwise in writing as well as to testimony orally delivered. Act II. 1855, sect. 16.

Provisions as to
witness to apply to
affidavits, &c.

(a) This decision of course reverses the precedent in N. A. R. vol. 2, page 25.

Punishment for giving false evidence.

555. Any such witness wilfully giving false evidence shall be subject to be proceeded against in like manner, and to suffer, if convicted, the same punishment as if he had been sworn and had committed wilful and corrupt perjury. The indictment or charge shall be varied so as to meet the case. Act II. 1855, sect. 17.

No incompetency from interest in suit.

556. No person shall, by reason of any interest in the result of any suit or of any interest connected therewith, or by reason of relationship to any of the parties thereto, be incompetent to give evidence in such suit. Act II. 1855, sect. 18.

Leprosy.

557. The fact of a witness being afflicted with leprosy does not bar the admission of his evidence. Const. No. 726.

Wife against husband.

558. The testimony of a wife against her husband may be received in corroboration of other evidence; N. A. R. vol. 1, page 144; but the practice of summoning the wife, or other near relation, of a prisoner as a witness for the prosecution, excepting in case of urgent necessity, is highly objectionable. N. A. R. vol. 2, page 149; and vol. 6, page 27.

*Near relation.

559. The evidence of near relatives of the prosecutor is admissible in criminal trials. N. A. R. vol. 3, page 309.

Wife in favor of husband.

560. The wife of the prisoner being brought forward to substantiate his defence (grounded on the murdered person having been detected in the act of adultery with her), her evidence was held to be inadmissible on account of the existing relationship between the parties. N. A. R. vol. 1, page 182. But under sect. 14, Act II. 1855 (para. 550) she is not incompetent to give evidence.

No new trial for rejection or improper reception of evidence.

561. The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the court before which such objection is raised, that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision. Act II. 1855, sect. 57.

Act not to render inadmissible evidence now admitted in the Com. courts.

562. Nothing in this Act contained shall be so construed as to render inadmissible in any court any evidence which, but for the passing of this Act, would have been admissible in such court. Act II. 1855, sect. 58.

Value.

Contradictory evidence.

563. In a case of affray attended with murder, the witnesses for the prosecution named before the sessions court as the actual perpetrator of the murder a particular prisoner, of whom they had made no mention before the magistrate: such variation was considered by the law officers, and the court, sufficient to nullify the whole of the evidence. But where the witness on trial varied from his evidence, as given in the thana report, only as to the extent of his personal knowledge, the variation was not considered material by the court. N. A. R. vol. 1, page 236; and vol. 2, page 17.(a)

(a) The terror of a gang of robbers, not apprehended, may sometimes deter persons, who have seen them commit a robbery, from giving information against them. But if, when questioned by the local officer of police, immediately after the robbery, they deny having recognized any of the robbers, their subsequent testimony, in opposition to such denial, must be received with the utmost circumspection; the more especially as it is a frequent practice, when persons of notorious or suspected character have been apprehended, to adduce false witnesses for their conviction of some specific offence. N. A. R. vol. 1, page 3, note.

564. The best evidence which can be procured must be adduced. Thus the lists of persons on whom processes had been served were not admitted until proved by the persons who kept the record of the issue of processes. Reports *W. P.* 1854, part 2, page 661.

Best evidence must be adduced ;

565. A girl, having eloped from the house of her parents, returns some time after, and asserts that she is their daughter: the denial of her identity by the parents is not held conclusive, as they are obviously interested in disclaiming the relationship. *N. A. R.* vol. 1, page 194.

but may be set aside, when witness has a personal interest.

566. When the session judge argued for conviction of the prisoners from the futility of the defence, the court observed that attention should always chiefly and carefully be directed to the goodness of the evidence for the prosecution ; because, if the charge be not fully and satisfactorily established, it signifies little how worthless soever the defence may be. In this country persons charged with offences (supported by good or bad proof) never trust to their innocence, they invariably set up an alibi, or make a counter-charge reckless of its silliness or incredibility. Reports *L. P.* 1851, page 392.

Proof must depend on the goodness of the evidence for the prosecution.

567. Hearsay evidence is not admissible ; and inadmissible evidence should not be recorded, as it tends to create impressions in the mind of the judge unfavorable to the prisoner. Reports *L. P.* 1852, part 1, page 174 ; and 1855, part 2, page 894.

Hearsay evidence inadmissible.

568. Except in cases of treason, the direct evidence of one witness, who is entitled to full credit, shall be sufficient for proof of any fact in any such court or before any such person.* But this provision shall not affect any rule or practice of any court that requires corroborative evidence in support of the testimony of an accomplice or of a single witness in the case of perjury. Act II. 1855, sect. 28.

Evidence of one witness sufficient proof.

* See para. 584.

569. But the trial must be referred for the orders of the court, under sect. 5, Reg. XVII. 1817, if the *futwa* acquits on the ground of one witness being insufficient under the Mahomedan law. Const. No. 634. C. O. No 48 of vol. 2.

570. It is proper that the evidence of all parties present at the commission of a heinous crime should be taken by the magistrate for comparison and check if necessary, though it is not requisite that the whole of the parties so examined should in the first instance be sent up as witnesses to the sessions. The session judge should have information of their depositions before the police, so that he may send for them if any point of doubt should arise. There might be instances in which suspicion might arise in the absence of statements from all parties present at the time of the alleged perpetration of a crime. It is necessary therefore to note on the record the cause of the non-examination of any such witnesses. Reports *L. P.* 1852, part 1, page 31.

But the evidence of all eye-witnesses must be taken by magistrate.

571. It is held as a general rule, that the examination of absent witnesses cannot be received in a criminal trial, and that their personal attendance is necessary. It seems however that evidence taken on oath before the magistrate, and duly attested and proved (as required in C. O. No. 54 of vol. 2*), is available on trial before the sessions in the event of the unavoidable absence of the witness. On this account magistrates are required invariably to take the evidence of the civil surgeon on oath. Const. No. 1280. C. O. No. 42 of vol. 3. But they cannot call upon the chemical examiner to make an affidavit or a verbal deposition

Evidence of an absent witness not admissible ;

unless absence be unavoidable, and evidence duly attested and proved.

* r. § 517, and section "Of Sessions."

Chemical examiner.

before the chief magistrate of Calcutta, regarding any matter referred for examination, as such affidavits and depositions are not legal evidence on account of the absence of the accused at the time of making. C. O. No. 146 of vol. 3. For rules regarding absent witnesses, see para: 463 *et seq.*

Abstract records of statements of witnesses made before darogah are not evidence; but may be used as other memoranda to refresh memory of persons called to prove such statements.

572. The abstract record of statements made by witnesses to a police darogah (which are not taken on oath, nor recorded separately, but are merely incorporated in his reports) are inadmissible as independent depositions, or even as records of depositions, by which the accuracy or consistency of the statements made by those witnesses in court may be tested. But the darogah may be called to prove the statements made before himself; and may be allowed to refer to such abstracts, viewed as memoranda taken at the time or soon afterwards, in order to refresh his memory. Reports *L. P.* 1856, part 2, page 6.

Evidence should be taken, whenever it is possible, in the presence of the accused.

573. It is irregular to commit prisoners for trial on evidence taken in their absence before their apprehension, as they have no opportunity of cross-examining the witnesses; but such irregularity does not vitiate the trial. (a) Reports *L. P.* 1851, page 231.

574. But where a mohurir was charged with obtaining money from the treasury on the false plea that he had been authorized by the principal sudder ameen to draw his salary, it was held that the omission of the session judge to take the evidence of that officer vitiated the proceedings. The roobakaree of the principal sudder ameen stating that he did not give the prisoner permission to draw his salary could not be admitted as legal evidence. The prisoner had a right to have him examined in his presence, and to cross-examine him upon it. Reports *L. P.* 1852, part 1, page 112.

575. Where the evidence of a woman had been taken by the magistrate, after she had been put on her defence but discharged for want of proof, and it appeared by her own account that she was an accomplice in the murder, and she was absent at the time of the sessions having absconded in the interval, it was held that her evidence could not be taken into account by the sessions judge. Reports *W. P.* 1855, part 1, page 419.

Of a witness since dead.

576. In a case of murder, a principal witness having died before the trial came on before the sessions court, it was held that, if the judge considered the evidence of sufficient importance to warrant his so doing, it was incumbent on him to transfer the deposition of the deceased person, taken before the magistrate, duly authenticated, to the record, affording to it such consideration as it might appear to claim, when weighing the testimony adduced. N. A. R. vol. 4, page 335.

Dying declaration when admissible.

577. Where dying declarations are evidence, they shall be received, if it be proved that the deceased was at the time making the declaration, and then thought himself to be, in danger of approaching death, though he entertained at the time of making it hope of recovery. Act II. 1855, sect. 29.

It need not be on oath; or in the presence of the accused;

578 It is not necessary to the admission of a dying declaration that it should have been taken on oath; Reports *W. P.* 1856, part 1, page 80; or in the presence of the accused. Reports

(a) Such practice is not illegal: see note to para: 557.

L. P. 1856, part 2, page 6. It should bear on it a note of the precise hour of the day at which it is taken. Reports *L. P.* 1853, part 2, page 180. It must be brought on the record of the trial; and evidence taken to its accuracy; *N. A. R.* vol. 5, page 9; Reports *L. P.* 1852, part 1, page 1080; and without such proof it is inadmissible as evidence. *N. A. R.* vol. 6, page 150.

time of taking to be noted;

must be proved.

579. The dying declaration of a murdered person (taken down in writing by a *sezawul*) was considered alone insufficient for conviction. *N. A. R.* vol. 4, page 31.

580. A magistrate cannot try a case, transferred to the foudjaree from the salt department, on evidence taken before himself in his capacity of salt agent. Const. No. 817.

Evidence taken in another court.

581. So also the evidence recorded in a moonsiff's court was held to be inadmissible, as proof of a fact, in a trial before the sessions; and the mere recital, in the roobakaree of commitment in a case of perjury, that the prisoner made oath, was not considered sufficient evidence; the court would not presume that he was sworn, because he ought to have been. *N. A. R.* vol. 2, page 64.

The court will not assume,

582. But the admission of the fact by the prisoner may be taken to supply such omission in the evidence. *N. A. R.* vol. 3, page 22.

unless prisoner admits.

583. So, when a prisoner admitted that the corpse found was that of the murdered person, the court did not deem the absence of proof as to its identity sufficient to bar a capital sentence. *N. A. R.* vol. 2, page 104. Although in a case in which the prisoner confessed a murder, and pointed out human bones, which he alleged to be those of the person murdered, the court held that as the bones did not admit of identification, there was not a sufficient finding of the body to warrant a capital sentence. *N. A. R.* vol. 2, page 82.

584. Within the territories in the possession and under the government of the East India Company, all courts of justice, and all persons having by law or consent of parties authority to take evidence, shall take judicial notice of all Regulations and Ordinances made before or on the 22nd day of April 1834 by the governor general in council of the presidency of Fort William in Bengal, and having the force of law in any part of the said territories, and of all laws and Regulations heretofore made by the governor general of India in council, and of this Act, and of all Acts and Regulations heretofore made, or hereafter to be made by the governor general of India in council, constituted for the purpose of making laws and Regulations, whether the same be of a public or of a private nature. Act II. 1855, sect. 2.

Documentary evidence, and judicial notice of persons.

Judicial notice to be taken of all Acts and Regulations.

585. All courts and persons aforesaid shall take judicial notice of all public Acts of Parliament and of all local and personal Acts declared by Parliament to be public and to be judicially noticed; and shall admit, as *prima facie* evidence of any private Act of Parliament, any copy thereof purporting to be printed by the King's printer. Act II. 1855, sect. 3.

Judicial notice to be taken of public Acts of Parliament.

What shall be *prima facie* proof of a private Act.

586. Every court shall take judicial notice of its own members and officers respectively, and of their deputies and subordinate officers or assistants, and also of all officers

Judicial notice to be taken by court of its own officers, &c.

acting in execution of its process, and of all advocates, attornies, proctors, vakeels, pleaders, and other persons authorized by law to act before it. Act II. 1855, sect. 4.

Judicial notice to be taken of the names, titles, &c., of certain persons.

587. All courts and persons aforesaid shall take judicial notice of the names, titles, and authorities of the persons filling for the time being any one of the following offices in any part of the said territories :—Governor General, Governor, Lieutenant Governor or Deputy Governor, Secretary or Under-Secretary to government, Commander-in-Chief, Bishop, Member of Council, Legislative Councillor, Judge of any of Her Majesty's courts or of any sudder court, or of any court of judicature hereafter to be constituted in the said territories, to or in which the powers of any of Her Majesty's supreme courts may be transferred or vested. Act II. 1855, sect. 5.

Judicial notice to be taken of divisions of time, place, &c.

588. All such courts and persons aforesaid shall take judicial notice of all divisions of time, of the geographical divisions of the world, of the territories under the dominion of the British Crown, of the commencement, continuation, and termination of hostilities between the British Crown and any other state, and also of the existence, title, and national flag of every sovereign or state recognized by the British Crown. In all the above cases, such court or person may resort for its aid to appropriate books or documents of reference. Act II. 1855, sect. 6.

Proof of government gazette.

589. Any government gazette of any country, colony, or dependency under the dominion of the British Crown, may be proved by the bare production thereof before any of the courts or persons aforesaid. Act II. 1855, sect. 7.

Proof of proclamations, acts of state, &c.

Proclamations, &c. when to be *primâ facie* proof of fact.

590. All proclamations, acts of state, whether legislative or executive, nominations, appointments, and other official communications of the government, appearing in any such gazette, may be proved by the production of such gazette, and shall be *primâ facie* proof of any fact of a public nature which they were intended to notify. Act II. 1855, sect. 8.

Proof of official documents.

591. Whenever by any Statute, Act, Regulation, or Ordinance now in force, or any Statute or Act to be hereafter in force, any certificate, certified copy, or other document, shall be receivable in evidence of any particular in any court of justice, the same, if it is substantially in the form and purports to be executed in the manner directed by the Statute, Act, Regulation, or Ordinance, which makes it evidence, shall be *primâ facie* evidence, where it is rendered admissible, without proof of any seal, stamp, signature, character, or authority, which it is directed to have, or from which it is directed to proceed. Act II. 1855, sect. 56.

Recital in Act of a fact of a public nature to be *primâ facie* proof.

592. Any recital contained in any Act of the governor general of India in council, constituted for the purpose of making laws and Regulations hereafter to be passed of any fact of a public nature, shall be deemed, before all such courts and persons, to be *primâ facie* evidence of the truth of the fact recited. Act II. 1855, sect. 9.

Gazette, &c., containing advertisement purporting to be published by authority, to be *primâ facie* evidence of such authority.

593. The gazette or newspaper containing any advertisement purporting to be published by virtue of any public Statute, Act, Regulation or Ordinance, or of any rule, or order of a court of justice or of any board or officer of revenue, may be received by any such courts or persons as aforesaid as *primâ facie* evidence that such advertisement

was published duly under the authority from which it purports to proceed. Act II. 1855, sect. 10.

594. All courts and persons aforesaid may, on matters of public history, literature, science, or art, refer, for the purposes of evidence, to such published books, maps, or charts as such courts or persons shall consider to be of authority on the subject to which they relate. Act II. 1855, sect. 11.

Books, maps, &c., to be evidence in matters of public history, &c.

595. Books printed or published under the authority of the government of a foreign country and purporting to contain the statutes, code, or other written law of such country, and also printed and published books of reports of decisions of the courts of such country, and books proved to be commonly admitted in such courts as evidence of the law of such country, shall be admissible before any such courts or persons as aforesaid as evidence of the law of such foreign country. Act II. 1855, sect. 12.

What books, &c., shall be evidence of foreign law.

596. All maps made under the authority of government, or of any public municipal body, and not made for the purpose of any litigated question, shall *prima facie* be deemed to be correct, and shall be admitted in evidence without further proof. Act II. 1855, sect. 13.

Government or public maps, when to be *prima facie* proof.

597. A witness, whether a party or not, shall not be bound to produce any document relating to affairs of state, the production of which would be contrary to good policy, nor any document held by him for any other person who would not be bound to produce it if in his own possession. Act II. 1855, sect. 21.

Witness, &c. not bound to produce document relating to state affairs.

598. A witness, being a party to the suit, shall not be bound to produce any document in his possession or power, which is not relevant or material to the case of the party requiring its production, nor any confidential writing or correspondence which may have passed between him and any legal professional adviser. If any party however offer himself as a witness, he shall be bound to produce any such writing or correspondence in his custody, possession, or power, if relevant or material to the case of the party requiring its production. Act II. 1855, sect. 22.

Party to suit not bound to produce certain documents;

unless he offers himself as a witness.

599. Every witness summoned to produce a document shall, if the same be in his custody, possession, or power, be bound to bring it, or cause it to be brought into court, although there be a valid objection to the right of the party calling for it to compel its production, or to the reading or putting it in as evidence, or to the disclosure of the contents thereof. The validity of any such objection, made by the person producing the document, shall be determined by the court: and for the better determination thereof, it shall be lawful for the court to receive any admissible evidence which the person producing the document may give respecting it; and it shall also be lawful for the court, except in the case of any document relating to affairs of state, to inspect the document; and, if necessary, to call to its assistance any person whom it may appoint to interpret the same. Such person, however, shall be previously sworn truly to interpret the same to the court alone, and not to disclose the contents thereof except to the court, unless the court shall order the document to be given in evidence. Act II. 1855, sect. 23.

Witness summoned to produce a document must bring it into court.

Mode of determining objection to production.

* Document relating to affairs of state.

Professional
communications.

600. A barrister, attorney, or vakeel shall not, without the consent of his client, disclose any communication made by the client to him in the course of his professional employment, nor any advice given by him professionally to his client, nor the contents of any document of his client, the knowledge of which he shall have acquired in the course of his professional employment. The privilege, however, is that of the client; and if any party to a suit shall give evidence therein at his own instance, he shall be deemed thereby to have waived his privilege, and to have consented to the disclosure by such barrister, attorney, or vakeel, of any matter as aforesaid, which may be relevant, and which the barrister, attorney, or vakeel would have been bound to disclose, but for the privilege of his client; and the barrister, attorney, or vakeel shall be bound upon examination to disclose any such matter. Act II. 1855, sect. 24.

Persons present
in court to give
evidence, &c.,
though not sum-
moned.

601. Any person present in court, whether a party or not, may be called upon and compelled by the court to give evidence, and produce any document then and there in his actual possession, or in his power, in the same manner and subject to the same rules as if he had been summoned to attend and give evidence, or to produce such document; and may be punished in like manner for any refusal to obey the order of the court. Act II. 1855, sect. 25.

Person summon-
ed to produce a
document not
bound to attend
personally.

602. Any person, whether a party to the suit or not, may be summoned to produce a document without being summoned to give evidence, and any person summoned merely to produce a document, shall be deemed to have complied with the summons, if he cause such document to be produced instead of attending personally to produce the same. Act II. 1855, sect. 26.

Copy of a docu-
ment made by a
copying machine to
be deemed correct.

603. An impression of a document made by a copying machine shall be taken without further proof to be a correct copy. Act II. 1855, sect. 35.

Admission of
secondary evidence
where original
document is out of
the reach of pro-
cess.

604. When an original document is out of the reach of the process of the court, it shall be lawful for the court, on application to it in any civil suit or proceeding, and on notice to the opposite party at a reasonable time before the hearing, to make an order for the reception of secondary evidence of its execution and contents. Act II. 1855, sect. 36.

When attested
document may be
proved as if un-
attested.

605. An attested document may be proved as if unattested, unless it be a document to the validity of which attestation is requisite. Act II. 1855, sect. 37.

Admission *prima*
facie proof of an
attested document.

606. The admission of a party to an attested instrument of its execution by himself shall be as against him sufficient *prima facie* proof of such execution of it, though it be an instrument which is required by law to be attested. Act II. 1855, sect. 38.

Entry made
against interest or
in course of busi-
ness, when admis-
sible in life-time of
person making it.

607. Any entry or statement, which would be admissible in evidence after the death of the person who made it, on the ground of its having been made against the interest of the person making it, or on the ground of its having been made in the ordinary course of business, shall be admissible, though the person who made it be not dead, if he is incapable of giving evidence by reason of his subsequent loss of understanding, or is at the time of the trial or hearing *bonâ fide* and permanently beyond the reach of the process of the court, or cannot after diligent search be found. Act II. 1855, sect. 39.

608. Any entry in any books proved to have been regularly kept in the course of business, or in any public office,—so far as such entry merely refers to and tends to identify by name, description, number, or otherwise, any bank notes or other securities for the payment of money, or other property, and the payer-in or receiver of them,—shall, in any case where such identification is necessary to be proved, be admissible in evidence for that limited purpose, if it shall appear to have been made at or about the time of the transaction to which it relates, though the person who made it, or he on whose information it was made, is alive and capable of being produced as a witness. Act II. 1855, sect. 40.

Entry in course of business when admissible for purpose of identification.

609. Any receipt in writing, acknowledging the receipt of any money, valuable securities, or goods, shall, on proof of the execution thereof, be admissible in evidence before such court or person aforesaid, not only against the party giving it, but also against any person in whose favor such receipt would operate as a discharge, or to whom it would render the person giving it liable for the money, security, or goods acknowledged to have been received. Act II. 1855, sect. 41.

Receipt when evidence against person other than the giver.

610. Whenever a receipt would be admissible under the preceding section if given by a principal, a receipt given by an agent or servant of such principal shall in like manner be evidence upon proof of the authority to give such receipt. Act II. 1855, sect. 42.

Receipt of agent.

611. Books proved to have been regularly kept in the course of business or in any public office shall be admissible as corroborative, but not as independent, proof of the facts stated therein. Act II. 1855, sect. 43.

Books kept in course of business or in a public office admissible as corroborative evidence.

612. The following documents may be admitted as corroborative evidence :—certificates of shares ; and of registration thereof ; bills of lading ; invoices ; account sales ; receipts usually given on the payment, deposit, or delivery of money, goods, securities, or other things ; provided they be proved to have been given in the ordinary course of business. Act II. 1855, sect. 44.

Documents admissible as corroborative evidence.

613. In cases of pedigree, the declarations of illegitimate members of the family, and also of persons who, though not related by blood or marriage to the family, were intimately acquainted with its members and state, shall be admissible in evidence after the death of the declarant, in the same manner and to the same extent as those of deceased members of the family. Act II. 1855, sect. 47.

Declarations of illegitimate persons, &c., admissible in questions of pedigree.

614. On an enquiry whether a signature, writing, or seal, is genuine, any undisputed signature, writing, or seal of the party, whose signature, writing, or seal is under dispute, may be compared with the disputed one, though such signature, writing, or seal be on an instrument which is not evidence in the cause. Act II. 1855, sect. 48.

Comparison of hand-writing, &c.

615. Any power of attorney, which has been executed at a place distant more than 100 miles from the place wherein the action, suit, or proceeding is depending, may be proved by the production of it, without further proof, where it purports, on the face of it, to have been executed before, and authenticated by a notary public, or any court, judge, consul or magistrate. Act II. 1855, sect. 49.

Proof of power of attorney.

Proof of dispatch
of letter by letter
book.

616. Whenever it is proved that a letter book is kept, and that, according to the usual course of business, letters are copied into such book and dispatched, and the letter book is produced, and it is proved that the letter was dispatched according to the usual practice, to the best of the knowledge and belief of the witness, having reasonable ground for forming that belief, the court may presume the dispatch of that letter according to the usual course of business. Act II. 1855, sect. 50.

What to be *prima
facie* proof of re-
ceipt of letter.

617. Any book proved to have been kept for marking the dispatch and receipt of letters, containing an entry of the dispatch of a letter, and an acknowledgment of the receipt of such letter, shall, on proof that such entry was made in the usual course of business, be *prima facie* evidence of the receipt of such letter. Act. II. 1855, sect. 51.

618. An anonymous letter received by a magistrate cannot be taken as evidence. Reports *W. P.* 1855, part 1, page 639.

Public writings ;
copies must be on
stamp paper.

619. Copies of judicial or revenue papers are not to be received as evidence in any court of justice, or in any public office whatever, unless made on stamp paper, and authenticated by the seal and signature of the court, collector, or other public officer having charge thereof.—(*For rules for procuring copies of records, see chapter 6 of book 1.*) Reg. XXVI. 1814, sect. 16, cl. 4.

Private writings ;
copies ditto.

620. When a deed has been once filed in court, it becomes a record, and a copy may be taken upon the stamp prescribed for copies of records. Const. No. 428.

What are inad-
missible unless
stamped.

621. No deed, instrument, or writing, executed in any place whatsoever on the continent of India, and relating to the payment or receipt of any sum of money, or to the sale, conveyance, assignment, or transfer of any property real or personal, being within any province or place to which this regulation extends, or of any interest in such property, or relating to any agreement, contract, obligation, engagement, or settlement intended to have effect within any province or place as aforesaid, (such deed, instrument, or writing being of a description chargeable with stamp duty) shall be pleaded, given, or admitted in evidence, or otherwise received or filed in any court of judicature or other public office, within the provinces subject to the Presidency of Fort William, unless the paper, vellum, or other material, on which such deed, instrument, or writing may be written, shall be stamped with the stamp prescribed for such in schedule A of this regulation, or bear a stamp of an amount exceeding that so prescribed, or be stamped as prescribed at the date of its execution. Reg. X. 1829, sect. 3.

Account books.

622. No regulation requiring that account books shall be written on stamp paper, they are admissible as evidence, though written on plain paper. (a) Const. No. 592.

**Mahome-
dan law.**

AMENDMENT OF.
Course of pro-
cedure, if the evi-
dence of a

623. The religious persuasions of witnesses are not to be considered as a bar to the conviction and condemnation of a prisoner ; but in cases, in which the evidence given on trial would be deemed incompetent by the Mahomedan law, solely on the ground of the persons giving such evidence not professing the Mahomedan religion, the law officer of the sessions court is

(a) It follows, therefore, that all documents, not coming within the provisions of the above regulations, are admissible on unstamped paper.

to declare what would have been his futwa, supposing such witnesses had been Mahomedans. In such cases the court is not to pass sentence, but is to transmit the record of the trial with such futwa to the nizamat adawlut, which court, provided they approve of the proceedings held on the trial, is to pass such sentence as they would have passed, had the witnesses been of the Mahomedan persuasion. *Beng. Reg. IX. 1793, sect. 56. Ced. Prov. Reg. VII. 1803, sect. 25.*

witness is declared inadmissible by the law officer on the ground of his not being a Mahomedan.

624. If the evidence of a witness on a criminal trial, before the sessions, is declared by the law officer inadmissible, on the ground of the witness being a police officer, or an officer of government of any description; or on any other ground of exception in the Mahomedan rules of evidence, which appears to the judge unreasonable and insufficient; the examination of the witness is to be taken, and the law officer is to declare in his futwa the sentence to which the prisoner would have been liable, if the evidence of the witness had been admissible under the provisions of the Mahomedan law. In such cases however, if the conviction of the prisoner depends exclusively or principally upon the evidence of such witness, the judge is not to pass sentence, but is to refer the trial to the nizamat adawlut; which court, after taking a futwa from its law officers, is empowered to pass such sentence as is deemed just and proper, under the preceding section of this regulation, and the general regulations in force. *Reg. XVII. 1817, sect. 5.*

Or on any other account.

625. Thus, the conviction of a prisoner resting principally on the evidence of two females, whose testimony the law officer holds insufficient for conviction, the judge, differing, must refer the trial. *Const. No. 1045.*

Example.

626. No punishment whatever is to be inflicted upon suspicion only (termed by the Mahomedan lawyers *wahm*, *shuk*, or *shoobah zaefah*), when the evidence against the prisoner is undeserving of credit; or the presumption of his guilt, arising from credible testimony, or circumstantial evidence, is weak; and does not amount to the degree of strong and violent presumption, held sufficient for conviction, and recognized as such in the Mahomedan law under the denominations of *ghulib-oo-zun*, *akbur-oo-raee*, and *shoobah-u-curvee*, or *shoodeed*. When the judge does not consider a prisoner convicted on such presumptive proof, or on the evidence of credible witnesses, or on his own confession, he is not to sentence the prisoner to any punishment, whatever may be the futwa. *Reg. LIII. 1803, sect. 2, cl. 6.*

If evidence amounts to suspicion only, or weak presumption of guilt.

627. The evidence required by the Mahomedan law varies in relation to different offences, and depends upon the principle of justice within the provisions of which it falls. We have already briefly adverted (paragraph 43) to the rules of evidence under the heads of *tazeer* and *seasut*, but a general view of the subject appears desirable in this place, notwithstanding that the foregoing provisions supply the remedy in cases, where the defects of this law are found to obstruct the free administration of justice. What follows is taken from the 21st book of the Hedaya, entitled *Shahadat*, or evidence, in volume 2 of Hamilton's translation.

RULES OF EVIDENCE.

628. In all cases of crimes punishable by *kisas* it is incumbent upon every person to give his testimony, on being required to do so by the party concerned; but a witness is at

How far it is incumbent to give evidence.

liberty to give or withhold any evidence, which may lead to the conviction of a Mussulman of any offence liable to *hudd*, or a less severe punishment. This is held, because the prophet said to a person who had borne testimony, "verily it would have been better for you if you had concealed it;" and again, "whoever conceals the vices of his brother Mussulman shall have a veil drawn over his own crimes in the two worlds by God." But this does not mean that it is commendable in a witness to commit perjury; he must tell the truth, but not the whole truth; a denial of a positive fact would be wrong, but equivocation is praiseworthy.

Number of witnesses required to constitute full legal proof.

Evidence of women.

629. In order to constitute full legal proof, the Mahomedan law requires the evidence—in a case of *zina*, of four men;—in a case punishable by *kisas* or *hudd*, of two men;—and in all other cases, of two men, or of one man and two women.(a) These numbers are the least required; but it is expressly stated that the strength of a case does not lie in the number of witnesses adduced to bear testimony. The evidence of women is inadmissible in all cases inducing *hudd* or *kisas*, the operation of which is barred by a doubt of the truth of the charge, because the testimony of women involves in itself a degree of doubt; and it is considered merely as a substitute for evidence, being taken only when that of men cannot be had. There is an exception to this rule founded on a traditional saying of the prophet, "the evidence of women is valid with respect to such things as it is not fitting for man to behold."

Character of witnesses.

630. It is an essential point in the consideration of evidence that the good character of the witnesses should be undoubted. In most cases, however, the magistrate may rest contented with the apparent probity of a Mussulman, "because the probable character of all that profess the religion of Islam is an abstinence from every thing prohibited by that religion;" but, in cases inducing retaliation or fixed punishment, mere probability is not sufficient, and therefore a purgation of the witnesses must be made by a strict investigation into their character. Such purgation is also necessary, if the defendant impugns the probity of the witnesses for the prosecution; and it may be made openly or in secret by the magistrate.

What evidence is inadmissible;

and what witnesses incompetent.

631. Evidence on hearsay is inadmissible except in proof of such matters as admit the privacy of only a few persons: so also evidence which depends on recognition of the voice is imperfect and is not allowed, for which reason a blind man is not a competent witness: and a man must not swear to his own signature, unless he remembers the act of signing.(b) Slaves, convicted slanderers, atrocious criminals, free-thinkers, heretics, and infidels, and generally persons guilty of shameless acts, or of such as are prohibited by law, are not admitted to be sufficient witnesses for want of credit.(c) Testimony is also

(a) So, where there are only three witnesses, one male and two females, and their evidence is contradictory, full legal proof is wanting. N. A. R. vol. 1, page 193. In another case, the evidence of a female, and a minor was held insufficient. N. A. R. vol. 4, page 261.

(b) Comparison of hand-writing is not admitted as legal evidence. N. A. R. vol. 1, page 113, and note. See also Hed. Trans. vol. 2, page 630.

(c) The evidence of accomplices is insufficient to prove any criminal charge, though admitted, when corroborated by other evidence, to establish violent presumption. N. A. R. vol. 1, page 304.

inadmissible in favor of a father or son, or of a grandfather or grandson, or of a husband or wife, or of a master or slave, in consideration of their relative interests; (a) so also the testimony of interested persons (b) and of one partner in favor of another in a matter relative to their joint property cannot be received; but this rule does not apply to evidence in favor of a brother or an uncle, because such relations have no power over one another. If the accused person be a Mussulman, it is requisite that the witnesses against him be also of the same religion; (c) the testimony of *zimmes*, or infidel subjects, with respect to each other, is admissible, although they be of different religions; the evidence of a Mussulman also is valid against a *zimme*; and the testimony of both may be taken against an infidel *moostamin*, or protected stranger. But the evidence of the latter is invalid against any person except one of his own countrymen, also a protected alien.

632. All evidence, with respect to such punishments as are purely a right of God, is vitiated and rendered void by such great delay in the production of it, as amounts to *takadim*, where the witnesses were not prevented from coming forward. The argument is that if the witness withheld his evidence for the sake of concealing the infirmity of another, it follows that any subsequent evidence could only arise from motives of malice, or of private interest, in which case his testimony is invalid; and if, on the other hand, the witness delays so long to perform the duty of giving evidence, which in all other cases is incumbent upon him, his evidence must then be held unworthy of attention. Hence, in either case, the witnesses are liable to suspicion on account of their falsity or unworthiness. The limitation of *takadim* is disputed, but it is generally held to be one month. (d)

Evidence is rendered void by great delay on the part of the witnesses in producing it.

633. The validity of the evidence at the time of passing the decree constitutes the proof; and therefore, if a witness loses his competency after having given evidence, and before the passing of the decree, by reason of blindness, or dumbness, or insanity, or from becoming infamous, the decree cannot issue; but in such cases death or absence does not destroy competency.

The evidence must be valid at the time of passing the decree.

634. It seems that when the evidence of two witnesses do not entirely agree, only so much is to be believed as is confirmed by both; but the entire evidence must be rejected, if they differ on points in regard to which it is improbable that the memory should fail; or on points not superficially apparent, any knowledge of which therefore bespeaks a more minute attention.

In case of contradictory evidence.

635. A witness may give evidence by proxy, by substituting another person to detail certain facts or opinions for him, in case of his inability to give evidence in person. But this is admissible only in cases of necessity, arising from the death of the principal witness, or from his having departed to a distance of three days' journey, or from severe sickness; and is never admitted in cases in which the occurrence of a doubt bars judgment.

Evidence given by proxy.

636. Rules also are given whereby a witness may retract his evidence before the decree is passed, and in such case the evidence becomes void.

Retraction of evidence.

(a) N. A. R. vol. 1, page 7.

(b) In cases of extortion the law officers have held that those, who contributed to the extortioner's demands, could not be admitted as witnesses, as they were, in point of fact, plaintiffs in the case: but the court over-ruled this doctrine. N. A. R. vol. 2, page 341, and vol. 4, page 286.

(c) N. A. R. vol. 1, page 81.

(d) Hed. Trans. vol. 2, page 85.

Futwa delivered
by law officers of
nizamut adawlut
on imperfect evi-
dence.

637. To this summary of the rules of evidence, which is necessarily imperfect, may be added the translation of a futwa given by the law officers of the nizamut adawlut in 1799, in answer to a question regarding punishment in cases of *shoobah*, which I find quoted in Harington's Analysis, vol. 1, page 292. "There are three degrees of imperfect evidence. The first produces *shuk*, or uncertainty whether the charge be true or false. The second establishes *zun*, or presumption that the accusation is true. The third excites *wuhm*, or doubt against the truth and probability of the fact alleged. The degree of *zun* is admitted to be a ground of legal conviction and sentence, provided the mind receives a strong impression and assurance from it; in which case it is denominated *akbur-i-race*, and *zun-i-ghalib*. This degree of violent presumption amounts nearly to certainty, and is fully described as such in the *Ashbaho Nuzayir*. The sum of the above is, that a penal sentence may be founded upon imperfect evidence, when, in the judgment of the magistrate, it affords strong ground of presumption that the crime charged has been committed by the party accused. In the *Buhr-i-rayik* it is related, from the jurist Aboo Bukr Aamash, that when a person accused of theft denies the charge, the magistrate may act to the best of his judgment upon the case. If he be impressed with a strong conviction that the prisoner has committed the theft, and has the stolen property in his possession, he may inflict discretionary punishment. In the *Mohret* it is declared that the shedding of blood upon violent presumption is authorized. And a similar declaration is contained in the *Buhr-i-rayik*, that it is held lawful to take away life upon strong presumptive proof. Thus, if a man enter the house of another with a drawn sword, and the owner of the house entertain a firm belief that the other is come to kill him, he may put the stranger to death. Strong presumption is sometimes produced by the circumstances of the case, without the testimony of witnesses. It is accordingly noticed by the author of the *Buhr-i-rayik*, that in like manner as a charge is proved by witnesses, or by the confession of the accused, so it is also established by convincing circumstances. Thus if a man come out of a house with a bloody knife in his hand; and he appear terrified, and run away; and the people immediately entering the house find a person whose throat has been recently cut; the blood dropping from it; and there be no other man in the house; these circumstances warrant a strong presumption that the man described is the murderer. A mere possibility of the person in question having cut his own throat, or that another may have cut his throat and escaped over the wall, is too remote from probability to be relied upon. Strong presumption is likewise, at times, found in the testimony of witnesses, not amounting to legal proof; in which case *tazeer* may be inflicted, though *hudd* and *kisas* are prevented. Thus Kazee Khan says, "an imputed murderer, robber, or assailant, may be imprisoned, till he show contrition." Upon which the author of the *Buhr-i-rayik* observes, that the imputation (*ittihám*) should rest upon the evidence, either of two witnesses of unascertained credit, or of one credible witness. Upon such evidence therefore, though legally defective, if it produce a violent presumption that the accused is guilty of the crime alleged against him, *tazeer* by imprisonment may be adjudged. But, on the contrary, if only a single witness of uncertain credit, or a known reprobate, have given testimony, the magistrate is not authorized to imprison the accused upon evidence of so doubtful a nature.

SECTION IX.

OF CONFESSIONS.

638. When a prisoner confesses before a magistrate the crime or misdemeanor with which he has been accused, or confirms any former confession, the magistrate is to be careful to have such confession, or confirmation of a former confession, witnessed by as many of his officers, or other creditable persons, present at the time it is made, as the Mahomedan law requires to give it validity, and to cause such witnesses to be in attendance at the sessions. *Beng. Reg. IX. 1793, sect. 6. Ced. Prov. Reg. VI. 1803, sect. 6.*

How to be taken.

BY MAGISTRATE.

Confession before magistrate to be witnessed; and number of witnesses required;

639. Confessions are to be attested generally by four, or at least by three, creditable and respectable witnesses, who can read and write. *C. O. No. 23 of vol. 1.*

not less than three.

640. The pleaders of a civil court may be called upon to attest confessions before the magistrate, and are liable to dismissal for refusing to do so. *Const. No. 101.*

Pleaders may be required to attest confessions,

641. The magistrate, in examining the witnesses to a written confession, should be careful to ascertain, that they, as well as the party confessing, were fully informed of the contents of it. *C. O. No. 89 of vol. 1, para. 5.*

Proof of mofussil confession

642. The examination of witnesses to confessions should invariably be close, full, and complete, so as to satisfy the courts, that every precaution has been taken to ensure the confession being perfectly voluntary, every word having been given at the time by the prisoner, and accurately recorded. *Reports L. P. 1852, part 1, page 81.*

must be full and complete;

643. The deposition of a witness to the confession of a prisoner cannot be received in evidence against him, unless it be taken in the presence of the prisoner. *N. A. R. vol. 1, page 300.*

and must be taken in the presence of the prisoner.

644. But the magistrates are strictly enjoined to satisfy themselves, that all confessions made by prisoners are free and voluntary; and notwithstanding such confessions, they are invariably to summon, and to bind over to attend at the sessions, the witnesses to the commission of the offence alleged against the prisoner, in the same manner as if the prisoner had denied the charge. The magistrates are further required to take special care, that persons, upon being apprehended, are not made to suffer corporal punishment, or otherwise ill-treated, under the pretence of compelling them to answer truly to questions that may be put to them, or under any other pretext whatever. *Beng. Reg. IX. 1793, sect. 6. Ced. Prov. Reg. VI. 1803, sect. 6. C. O. No. 52 of vol. 4. W. P.*

All confessions to be free and voluntary.

Evidence to the commission of the offence required independent of confession.

Precautions against ill-treatment.

645. The examination of all prisoners is to be made in the presence of the magistrate; and he is in no case to certify, or otherwise to authenticate, any paper, purporting to be a confession, which has not been made on a personal examination by himself. And more effectually to provide against the objectionable course of allowing the examination of prisoners to be taken in the *serishta* in the magistrate's absence, magistrates are required, in all cases of confessions before them, to certify the same in the following words: "I hereby certify that this confession of — was made by the said —, and taken down in writing, and attested by the subscribing witnesses, before me, and in my presence, on the —"

Examination of all prisoners to be made in the presence of the magistrate.

Made in which confessions are to be certified.

"between the hours of—; that, to the best of my belief, the confession was voluntary; "and that no interference, directly or indirectly, on the part of any person likely to influence "or intimidate the prisoner, was permitted." The magistrate is to attest this with his signature at length and the specification of his office. C. O. No. 54 of vol. 2, para. 20; and No. 90 of vol. 1.

646. It is not sufficient that the magistrate should verify the confession of a prisoner, written down in his absence: and confessions so taken were rejected as unworthy of credit. N. A. R. vol. 2, page 70. So the court held that they could not receive, as legal evidence, confessions taken before a magistrate who did not give his undivided attention to them when recorded. N. A. R. vol. 6, page 174.

Must be taken
by committing of-
ficer.

647. Confessions cannot be taken by an assistant when the case is before the magistrate. This important duty must always be performed by the committing officer in person, or the confession cannot be received as legal evidence. N. A. R. vol. 6, page 185.

If prevented from
so doing, the rea-
son must be placed
on record.

648. Whenever a committing magistrate may be prevented, in any serious case, from receiving a confession in person, the circumstances which may have prevented him should be placed on record by an official note or memorandum to be filed with the proceedings of the case. C. O. No. 56 of vol. 4, *L. P.*

649. Few young officers are aware how often confessions are not spontaneous: and therefore the magistrates themselves, who are responsible for the exercise of due discretion when they entrust duties to their subordinates and assistants, are bound to exercise a peculiarly watchful care and supervision in this important matter. Whenever, in capital cases, confessions are taken by other than covenanted officers, the magistrates are to assign the special reasons which made such a measure necessary or advisable. Attention also should be paid to the record of confessions, in order to ensure the legibility and distinctness of such serious documents. A few minutes more spent in writing would sometimes prevent the waste of hours in reading them, and obviate doubts as well as trouble. C. O. No. 52 of vol. 4, *W. P.*

Precautions to
be observed in
taking confessions,
that the prisoners
may not on the one
hand be dissuaded
from confessing,
and on the other be
compelled to do so
by improper means.

650. When accused persons, who have confessed in the mofussil, are forwarded by the police, they should not be allowed to mix with the prisoners in the common jail previous to their examination by the magistrate, lest they should be put upon their guard by them, and consequently decline to make any confession or discovery. On the other hand such persons, if examined immediately, and while under a strong impression of any improper treatment which they may have experienced in the mofussil, may be induced, before they have had time to recollect themselves, to confirm fabricated and extorted confessions. In order to guard against this danger, the magistrate should be mild and patient in his examination; and should exert himself to ascertain whether the prisoners have been subjected to such improper treatment, and to make them sensible that they are secure against such practices while under his care; he should be particularly attentive that alleged mofussil confessions be not recorded as confessions made before himself, from being read to prisoners and receiving their assent; but should satisfy himself, by making prisoners tell their own story, that their statements are deliberate and spontaneous; and lastly, he should be watchful, that prisoners are

not subject in the jail, or other places of confinement, to any continuance of the improper treatment to which they are liable at the thanas. The police officers, under whose charge prisoners are sent in, should not be permitted to be present during their examination; and the magistrate should see that the rules, prescribed (in sect. 19, Reg. XX. 1817) for the guidance of police officers in receiving confessions are carefully enforced. The too easy admission of confessions will always operate as a temptation to impose false confessions on the courts; while if they are received with circumspection, and all the additional evidence, which the case may admit of, uniformly required and carefully taken, the fear of detection must prove a powerful discouragement to the practice.(a) C. O. Nos. 73 and 78 of vol. 1.

Further rules.

651. On the arrival of every chalan or despatch of prisoners, the magistrate is carefully to examine the written chalan to see the date of the apprehension and the date of the despatch of each prisoner from the thana. If any prisoner has been detained in custody longer than the period allowed by law (48 hours) without reasonable explanation being given for such delay, he is to call on the police officer concerned to state why such delay has occurred; and he is to be careful to notice and punish every instance where satisfactory reasons are not given for this infringement of the provisions of cl. 16, sect. 19, Reg. XX. 1817. He is to be particular also in seeing that none of the prisoner's relatives or connexions, especially females, have been taken into custody and subsequently discharged by the police. He is also to enquire into, and punish police officers severely in all cases, in which it appears that any ill-treatment or severity, beyond what was necessary to secure their persons, has been used towards prisoners. On the arrival of a confessing prisoner at the place where the magistrate is, he is to be immediately removed from the custody of the police officers who have brought him in, and to be placed in the charge of the nazir, or in some secure place of confinement, not being the hajut-ward in the jail; and, after a sufficient time has been allowed him to collect and refresh himself, the prisoner is to be brought before the magistrate, and his confession is to be recorded under the precautions ordered by the nizamat adawlut. The mofussil confession is not to be placed in the hands of the native officer recording the confession before the magistrate; but is to be kept by the latter,(b) until the prisoner's fresh statement shall have been recorded in his presence. If it again amounts to a confession, the two statements are to be compared; and the prisoner should be asked to explain any discrepancies in or differences between the two; but no cross-examination tending to intimidate the prisoner or to compel disclosures from him is to be allowed. C. O. Sup. Pol. *L. P.* No. 6 of 1853. C. O. No. 16, June 21, 1855, *L. P.*

(a) C. O. No. 18 of vol. 3, contains an extract from a minute recorded by Sir Thomas Munro, when Governor of Madras, on the subject of extorted confessions.

(b) "The very remarkable correspondence between the mofussil and foudaree confessions of certain prisoners, not only in the words used, but in the course of the narrative, and in every peculiarity of expression, having come to the notice of the court, they have reason to believe that this coincidence has arisen from the practice of permitting the native officer, who records a confession in the magistrate's presence to have access to the confession made before the police, instead of requiring him to write down the spontaneous statement, as it is made by the prisoner in his own words. The court observe that no great reliance can be placed upon confessions thus elicited, as whatever influence may have induced a prisoner to tell a particular story at the thana, it will not be weakened in its operations, when he has his memory refreshed by the very same questions being asked him in the magistrate's court." C. O. No. 16, June 21, 1855.

Mohurirs writing confessions in the foudaree are not to be allowed to refer to the mofussil confessions.

652. The mohurirs of the magisterial courts, who take down the examinations of confessing prisoners, should not be allowed to refer to the original confessions of the same parties recorded at the thana or to interrogate the prisoners therefrom. The latter should be allowed to make their own spontaneous statements, and the presiding officer should retain the statements made at the thana in his own possession, until such time as the prisoner's foudaree statement shall have been recorded, when he is at liberty to question the confessing party as to any discrepancies that may exist between the two. C. O. No. 708, June 2, 1855, *W. P.*

Police officers not to be allowed to be present during the examination.

653. Police officers bringing in witnesses or defendants should not be allowed to remain in attendance at the cutcherry, until the examinations of such persons have been taken, as their object is frequently to see that the witnesses tell the story put into their mouths in the mofussil. C. O. Sup. Pol. L. P. No. 10 of 1846.

Thana confession not to be read over to a prisoner before he confesses to magistrate.

654. It is irregular to read over to a prisoner, before taking his confession, that which he had made at the thana. There is no better test of the genuineness of a confession than its repetition, without much variation, after an interval, before another authority; but if the former confession be read over to the prisoner, the efficacy of the test is destroyed. Reports *W. P.* 1855, part, 1, page 209.

How far the magistrate may cross-examine the prisoner as to his mofussil confession.

655. In a case where the session judge objected to a confession being received as evidence against a prisoner, because it had been obtained by cross-examination as to a mofussil confession, which had not been proved,—the court held that the magistrate was quite regular in questioning the prisoner as to the fact of the mofussil confession, to give him an opportunity of denying it, or of explaining whether it had or had not been obtained by improper means. N. A. R. vol. 4, page 245.

Where the confession is not supported by corroborative proof, its truth should be tested by questioning the prisoner.

656. Where the confession is in itself circumstantial and clear, and is followed by the production of the property plundered, or by the pointing out of the body of the deceased or by strong corroborative proof of any kind, the truth of the confession, at all events in its main features, may *prima facie* be presumed. In all other cases a confession should be regarded with distrust and should not be received or acted on without further scrutiny: prisoners should be subjected to a searching examination and questioned fully as to all particulars, and if they fail to point out the body or produce the property they should be required to show the cause of their failure to do so. They will then doubtless break down if the confession be false or have been procured by improper means. Govt. Order, *W. P.*, No. 2387A, October 26, 1855.

Police officers should not be allowed to take back to thana prisoners who have confessed.

657. It is most vicious and objectionable for the thanadar or other police officer to accompany prisoners, who have made thana confessions, to the foudaree court, and to request that such prisoners may be re-transmitted to the thana after their foudaree confessions have been recorded, though such request be made professedly, and perhaps really, for the purpose of the prisoner's aiding in the tracing of other offenders, or in the indication of stolen property. C. O. No. 1047, August 10, 1854, *W. P.*

658. The prisoners were acquitted, where it appeared that the confessions were not read over to the prisoners, and that such care was not taken as to render it certain that there was

no undue influence from the presence of any of the mofussil police during the taking of the confessions. N. A. R. vol. 6, page 260.

659. The original confessions of prisoners, taken down in their peculiar dialects, should be accompanied by translations on all occasions of reference to the *nizamut adawlut*(a).
C. O. No. 281 of vol. 1.

Translation in referred case.

660. The confession must be free and voluntary; [v. ¶ 644.]—for if it is obtained by improper influence, by promises, intimidation, or threats, it cannot be received in evidence; [N. A. R. vol. 1, pages 104, 251; vol. 2, page 166; vol. 4, page 269; vol. 6, pages 236, 276, and 331.]—yet confessions so improperly obtained have occasionally been admitted, when corroborated by other evidence, [N. A. R. vol. 1, page 81.]—such circumstance being considered in mitigation of punishment; [N. A. R. vol. 3, pages 156, 337.]—and a confession made in hope of benefit, though nowise improperly obtained, was allowed in mitigation. [N. A. R. vol. 1, page 98.]—and when a woman confessed to the murder of her husband on a promise made by the darogah that he would release her, and there was no other direct evidence, the sentence was mitigated on that account to transportation for life. [Reports *W. P.* 1855, part 2, page 599.]—It is not an objection to the admissibility of a confession, that it was made by the prisoner after being desired by the police officers not to fear to tell the truth; [N. A. R. vol. 1, page 33.]—nor is it an objection, that the prosecutor promised not to prosecute, if the confession be corroborated; [N. A. R. vol. 2, page 96; vol. 3, page 69;]—nor is a confession invalidated by the fact of a former confession having been made to a person not a police officer, under promise of release; nor by the non-observance of the rule contained in cl. 3, sect. 19, Reg. XX. 1817, which requires that whenever a confession is taken at night, or at any other place than the police thana, the special reason for its being so taken shall be stated in the darogah's report; [N. A. R. vol. 2, page 291.]—nor by the non-observance of the rule that prisoners shall not be detained by the police more than 48 hours after apprehension. [Reports *L. P.* 1252, part 1, page 581.]—So, it was held that confessions were admissible, when the police officers of one district traced some dacoits into another district, and recorded the confessions where they had no regular jurisdiction. [Reports *L. P.* 1851, page 665.]—Although a confession, improperly obtained, is not admissible, yet any facts, which have been brought to light in consequence of such confession, may be properly received in evidence; [N. A. R. vol. 3, page 156.]—and such facts, as explained by the confession, are sufficient for conviction. [Reports *W. P.* 1855, part 2, page 637.]

General Rules.

Must be voluntary.

661. It is not regular to convict a prisoner solely on his own confession: but evidence must be taken, to the actual commission of the crime with which he is charged, [v. ¶ 644; N. A. R. vol. 1, page 255; and vol. 4, page 229.]—and the prisoner may be acquitted in spite of his confession, though voluntarily made. [N. A. R. vol. 2, page 21; vol. 3, pages 242, 263, 325; vol. 5, page 103.]—A *thana* confession should be borne out by other evidence; [N. A. R. vol. 2, page 172.]—and is alone insufficient for conviction; [N. A. R. vol. 3, pages 23, 274.]—and even though acknowledged and confirmed by prisoner, it requires

Natural value and sufficiency as proof.

(a) But this refers now only to cases of peculiar dialects; C. O. No. 94 of vol. 3 *L. P.* dispenses with translations of all proceedings in criminal trials referred, with the exception of those cases, tried with the assistance of the law officer, in which the session judge recommends a capital sentence.

corroboration by other evidence: [N. A. R. vol. 3, page 97.]—but if proved to have been freely and voluntarily made, and supported by other evidence, it is sufficient. [N. A. R. vol. 3, page 345.]—A parole confession made before private individuals is not admissible; [N. A. R. vol. 2, page 45.]—however numerous the witnesses to it may be. [N. A. R. vol. 2, page 84.] The confession of a minor is admissible, if he is *doli capax*. [N. A. R. vol. 2, page 2.]

Effect of, as regards the person confessing.

662. If a confession be admitted, the whole of it must be taken together, in order to show distinctly the full meaning and sense of the prisoner; and due weight must be allowed to all the circumstances which he alleges in his own favour: [N. A. R. vol. 1, pages 39, 110, 130, 156, 240; vol. 2, pages 32, 48, 67, 98, 147, 256, 408, 456; vol. 3, pages 25, 154, 207, 236, 244, 300.]—and the prisoner need not call evidence to prove the assertions he makes in exculpation; [N. A. R. vol. 1, page 192.]—but such exculpatory pleas will be rejected, if they are disproved by credible evidence; [N. A. R. vol. 1, pages 144, 161; vol. 2, page 183.]—or if afterwards retracted by the prisoner: [N. A. R. vol. 2, page 472.]—and the court will always put its own construction on the degree of the prisoner's guilt, as shown in his own narrative,—whether against him, [N. A. R. vol. 1, page 60; vol. 2, page 79; vol. 3, pages 43, 238; vol. 4, pages 54, 127; vol. 5, page 61.]—or in his favor. [N. A. R. vol. 2, page 84.] If the prisoner subsequently retracts his confession, and it is not corroborated by other evidence, it may yet be used against him, if proved to have been given voluntarily; [N. A. R. vol. 1, page 381; vol. 2, pages 39 and 79;]—but not when there is no proof that the fact charged has been committed. [N. A. R. vol. 1, page 143.]—Evidence, consisting of two confessions made at the thana, one of which contained an exculpatory plea, while the other was wholly criminatory, was considered insufficient for conviction. [N. A. R. vol. 3, page 201.]

As regards others.

663. Magistrates ought not to commit for trial, or hold to security, any person solely on the ground of the accusation of confessing prisoners, that such persons were their accomplices or concerned in the offence charged; but this is not meant to restrict them from making such further inquiry as they consider necessary, or from acting according to the result. C. O. No. 156 of vol. 1. A confession is not evidence against any but the prisoner who made it. It cannot be assumed that, if trustworthy as against the party making it, it is also so as against third parties who may be implicated by it. Reports *L. P.* 1856, part 1, page 627. Reports *W. P.* 1854, part 1, page 181. But it seems that it may be admitted in aid of other proofs of another prisoner's complicity in forming strong presumption; Reports *W. P.* 1855, part 2, pages, 110, 266; or as corroborative of other independent evidence, but not directly for conviction. Reports *L. P.* 1855, part 2, page 23.

Mahomedan

Law.

Must be voluntary; and person confessing must be of sound mind.

664. In all criminal accusations before a Mahomedan court of judicature, the greatest weight is given to the confession of the party accused, whether made before the court or elsewhere, provided it be voluntary; and provided the person confessing be of sane mind and mature age; because the declaration of an infant or an idiot is unworthy of any credit, and he is in law incapable of any act which may cause injury to himself. It is also a general rule, that the whole of what is stated in explanation must be taken as part of the confession; but it seems doubtful how far the prisoner is bound to prove his exculpatory pleas. In the *Zeeadat* of Imam Mahomed it is stated to be a general principle that "whoever confesses an

Exculpatory pleas.

act which subjects him to a legal penalty, and subsequently offers a plea to exonerate himself from the penalty, must establish such plea by proof: but if he deny that which occasions the penalty, his denial is admitted." This passage is open to ambiguous construction; and, from the case to which it is applied, might be understood to require proof of a plea of justification in all cases of acknowledged homicide. The author of the *Humadeeyah*, who cites the *Zeeadat*, however, deduces from the above quotation a certain inference, that the statement of an act under "circumstances, which prevent its being penal, is a virtual denial of the cause of penalty;" and this conclusion is undoubtedly just and rational, when there is no evidence against the acknowledger of the act, besides his own statement of the case.(a) According to the law officers of the nizamat, there are two opinions; one, that the fact pleaded in justification is inadmissible without proof; this is *kiyas*, or the apparent construction of the law; the other, founded on *istahsan*, or the more profound or approved construction, is that no proof is required; the latter opinion is preferred.(b)—In a case of *zina* the confession is insufficient for punishment, until it has been repeated four times, the kazee being directed to refuse it on the three first occasions, and even then to suggest to the person confessing the mention of circumstances in mitigation or exculpation. In other cases a single confession is generally considered sufficient; though Aboo Yoosuf contends for the necessity of two confessions in cases of theft, in consideration of the number of witnesses required to make the evidence valid, advancing this as the reason why four confessions are required in *zina*.(c)—Retraction of confession is permitted in all cases, the punishment of which is purely a divine or in other words a public right; but in cases of slander and other offences, in punishing which the right of the individual is either wholly or partially concerned, a confession once made is irrevocable. The nature of the offence is considered in the same manner when the confession is made during intoxication; for, where the right of God only is affected, such confession is not sufficient for judgment. And a confession is invalid if any compulsion is used to extort it. When a confession as well as evidence is produced in proof of *zina*, the former must be complete in itself; for, if incomplete, it invalidates instead of strengthening the evidence. In confessions, as well as in evidence, much depends upon the expressions used; as for instance, it is no proof of theft if person confess that he took certain property without expressly declaring that he stole it. There is no difference between *zimmes*, slaves, and free Mussulmans with respect to confessions.(d)

Completeness of confession.

Retraction.

Made during intoxication.

Joined to evidence.

Effect of expressions in.

Description of persons.

665. (e) Confession, to be admissible, must be free and voluntary. And in the case of a confession before a magistrate or other person, if it appear that the defendant was induced to make it by any promise of favor, or by menaces, or undue terror, it shall not be received in evidence against him. Thus, if it be said to the defendant that it will be better or worse for him if he do or do not confess; or that what he says will be taken down and used for him or against him on his trial, or even if a confession be procured by a threat to take the

English Law.

Must be voluntary.

(a) Harington's Analysis, vol. 1, page 260.

(b) This opinion is stated by Harington to be in the fatwa given in N. A. R. vol. 1, page 151,—though this part of it is not mentioned in the printed report. See also N. A. R. vol. 1, page 192.

(c) Hed. Trans. vol. 2, page 86.

(d) Harington's Analysis, vol. 1, and Hed. Trans.

(e) The English law here given is taken from "Archbold's Pleading and Evidence in criminal cases."

defendant before a magistrate, if he do not give a more satisfactory account, or to send for a constable; or by saying "tell me where the things are, and I will be favorable to you;" or "you had better tell all you know;" or "you had better tell where you got the property;" or "you had better split, and not suffer for all of them;" or "it would have been better if you, had told at first;" or "I should be obliged to you if you would tell us all you know about it; if you will not, of course we can do nothing;" or "any thing you can say in your defence we shall be ready to hear;"—the confession will not be admissible. Where the prosecutor asked the defendant for the money that he had taken, and before it was produced said, "I only want my money, and if you will give me that, you may go to the devil if you please," upon which the defendant took part of the money from his pocket and said, that was all he had left; the evidence was held inadmissible. And a confession with a view, and under a hope of being thereby permitted to turn king's evidence, has been holden inadmissible. To exclude a confession made under the influence of a promise or threat, the promise or threat must be of a description which may be presumed to have such an effect upon the mind of the defendant, as to induce him to confess: and therefore an exhortation, admonition, promise, or threat, proceeding at a prior time from some one who has no concern in the apprehension, prosecution, or examination of the prisoner, but interferes without any authority, will not be sufficient to render a confession inadmissible. The inducement must also refer to a temporal benefit; for hopes, which are referrible to a future state merely, are not within the principle which includes confessions obtained by improper influence. But it is no objection to the admissibility of a confession, that it was elicited by questions, if no undue influence be used:—or that it was made under a mistaken supposition that some of the defendant's accomplices were in custody, even though it were created by artifice with a view to obtain the confession. And a letter given by a defendant to the jailor to put into the post is evidence against him. If the promise or menace, &c. take place previously to the prisoner's being brought before the magistrate, the court will, in general, refuse to admit the confession to be given in evidence, unless it appears that the prisoner was undeceived by the magistrate, and cautioned by him not to expect the favor, or not to regard the menaces held out to him. But, where a defendant, having been told by a constable that he might do himself some good by confessing, afterwards asked the magistrate if it would benefit him to confess, and, the magistrate saying he could not say it would, the defendant then declined to confess, but afterwards, when going to prison, made a confession to the constable; the confession was admitted, because the answer of the magistrate was sufficient to remove any expectation which the constable might have caused. If a confession be obtained by undue means, any statement made under the influence of that impression cannot be received. The only questions in these cases are—was any promise of favor, or any menace or undue terror, made use of, to induce the prisoner to confess?—and if so, was the prisoner induced by such promise or menace, &c., to take the confession? If the judge be of opinion in the affirmative, upon both these questions, he will reject the evidence. If, on the contrary, it appear to him, from circumstances, that, although such promises or menaces were holden out, they did not operate upon the mind of the prisoner, but that his confession was voluntary notwithstanding, and he was not biased by such impressions in making it, the judge will admit the evidence.

666. Although a confession, for the above or any other reasons, may not be receivable in evidence, yet any discovery that takes place in consequence of such confession, or any act done by the defendant, if it be confirmed by the finding of the property, will be admitted; as for instance, if a man by promise of favor be induced to confess that he knowingly received certain stolen goods, and that they are in such a room of his house, and the goods be found there accordingly, although the confession itself cannot in that case be given in evidence, yet it may be proved, that, in consequence of something the witness heard from the defendant, he found the goods in question in the defendant's house.

Discovery made in consequence of confession, which is inadmissible.

667. Admissions or confessions to other persons than magistrates, if in writing, are proved as any other written instrument; if by parole, they are proved by parole evidence of some person who heard them.

How proved.

668. In all cases, the whole of the confession should be given in evidence; for it is a general rule, that the whole of the account which a party gives of a transaction must be taken together: and his admission of a fact disadvantageous to himself shall not be received, without receiving at the same time his contemporaneous assertion of a fact favorable to him, not merely as evidence that he made such assertion, but admissible evidence of the matter thus alleged by him in his discharge. It has been said that, if there be no other evidence in the case, or none which is incompatible with the confession, it must be taken as true; but the better opinion seems to be, that, as in the case of all other evidence, the whole should be left to the jury to say whether the facts asserted by the prisoner in his favor be true.

Effect of.

669. Also it may be necessary to observe, that a man's confession is evidence only against himself, and not against his accomplices; although he charge his accomplice in his hearing, and the accomplice do not deny it. So, the confession of a principal is not evidence against an accessory to prove the guilt of the principal, which must be proved *aliunde*.

Good only against himself.

SECTION X.

OF THE FUNCTIONS OF THE MAGISTRATE.

670. By sections 2 and 3, Reg. IX. 1793 for *Bengal*,—sects. 2 and 3, Reg. XVI. 1795 for *Benares*,—and sects. 2 and 3, Reg. VI. 1803 for the *Ceded Provinces*,—the civil judges were constituted magistrates of the districts under their respective jurisdictions, with a provision that their local jurisdictions, as magistrates, should be the same as that of the civil court. It was however “found expedient to appoint a distinct officer to execute the duty of magistrate;” and consequently by sect. 2, Reg. XVI. 1810, the government was empowered to make such distinct appointment, and to direct whether the judge of the civil court should or should not exercise a concurrent authority as joint magistrate: and by section 6 of the same regulation, it was enacted that the officers so appointed should be guided by the regulations in force for the discharge of the duties of the magistrate's office.

Appointment.

Oath of office

671. Previous to entering upon the execution of the duties of his office, a magistrate is to take and subscribe the following oath :—" I, A. B., appointed magistrate of the zillah of—, solemnly swear, that I will, to the best of my ability, preserve the peace of the zillah over which my authority extends ; that I will act with impartiality and integrity, and will not exact, or receive, nor knowingly allow any other person to exact, or receive, directly or indirectly, any fee, reward, or emolument whatsoever, in the execution of, or on account of any matter relating to the duties of my office, excepting such as the orders of the governor general in council do or may expressly authorize ; and that I will perform the duties of my office, according to the best of my knowledge, abilities, and judgment, conformably to the regulations that have been, or may be, passed by the governor general in council. So help me God." *Beng. Reg. IX. 1793, sect. 2. Ben. Reg. XVI. 1795, sect. 2. Ced. Prov. Reg. VI. 1803, sect. 2. Cong. Prov. Reg. IX. 1804, sect. 7.*

must be taken,

672. So long as the law remains in its present state, requiring public servants to make a declaration before entering upon their duties, it is necessary that such declaration should be made in obedience to the law. It is not proper that the act of public officers should be liable to be called in question by reason of the neglect of what the law regards as an essential form.

and recorded, and
fact reported to the
court.

All declarations should be recorded in the office in which they are made, so as to be forthcoming in case of need ; and the fact reported to the court. They should be made before the officer appointed by law on that behalf, or before any sworn justice of the peace, or any court of civil or criminal justice. C. O. January 6, 1854. *L. P.*

Duties.

GENERAL

673. It is the duty of the magistrate to apprehend murderers, robbers, thieves, house-breakers, all disturbers of the peace, and persons charged before him with crimes or misdemeanors. *Beng. Reg. IX. 1793, sect. 4. Ced. Prov. Reg. VI. 1803, sect. 4.*

A chief duty of
the magistrate is to
superintend and
control his subor-
dinate.

674. The value of a magistrate's service is more dependent on the skill and judgment with which he directs and controls the acts of all subordinate officers, than upon the work he can himself perform. The time of any officer exercising civil or criminal jurisdiction ought not to be employed in details, which can be well performed by the ministerial officers. No business ought to be performed by the head of the office, which can be well done by his subordinate officers, covenanted or uncovenanted, if his attending to such duties will interfere with his more important duties of directing and controlling every branch of his office, and of aiding, instructing, and encouraging each in the proper performance of the particular duties assigned to him. C. O. No. 229 of vol. 2.

675. In a dispute for the possession of moveable property, the magistrate is competent to interfere, only when it has been acquired under circumstances which would authorize the laying of a direct criminal charge, such as theft, or fraud, or criminal trespass, or the like. Const. No. 1349. C. O. No. 64 of vol. 4.

Orders of civil
court.

676. A civil judge cannot call upon a magistrate to enforce his orders if resisted. Const. No. 1209.

677. When the orders of a magistrate are not subsidiary to a civil action (as in the case of a summary award of wages under sect. 6, Reg. VII. 1819), the civil court has no

power to issue an injunction to him for the purpose of stopping execution of his order. Const. No. 1158.

678. Judicial functionaries have no power to carry into effect the decisions of punchayuts under Reg. IX. 1833, as that duty lies within the province of the revenue authorities. Const. No. 895. Decisions of punchayuts.

679. A magistrate is not competent to fine a collector of revenue for refusing, or omitting, to obey his injunction: the rule of sect. 36, Reg. XIV. 1793, is restricted to the orders of the civil courts. Const. Nos. 364 and 414. Collector.

680. The magisterial authorities are prohibited from interfering in the election, recognition, or removal of chowdhries of trades and professions. (This rule supersedes Const. No. 816.) C. O. No. 163 of vol. 3. Chowdhries.

681. A magistrate is not competent to fine or imprison muhajuns or shroffs, who may be in the habit of demanding illegal batta on Company's rupees. Const. No. 1156. Illegal batta.

682. A magistrate has no authority to interfere to regulate the exchange of copper into silver. Const. No. 751. Exchange.

683. Magistrates are competent to punish the offence of using short weights as a fraud, under the general regulations; but they cannot prescribe a current standard of weight. Const. No. 1274. Short weights.

684. On the death, resignation, or removal of a canoongoe, the records of his office are to be made over to his successor; and the magistrate is enjoined, on the application of the collector, to interpose his authority, in all cases in which it is necessary to enforce the surrender of such records. And the refusal or manifest evasion of any person in possession of such records to deliver them up, on the requisition of the magistrate, subjects him to the penalties prescribed by the regulations for resistance to the process of the magistrate. *Ced. Prov. and Ben. Reg. IV. 1803. sects. 9 and 10. Shahabad, Tirthoot, Sarun, Patna and Behar, Reg. II. 1816, sects. 9 and 10. Ramghur, Bhaugulpore, and Purnea, Reg. II. 1817. Cuttack, Puttaspore, and the Pergunnahs dependent on it, Reg. V. 1816, sects. 9 and 10; extended to Midnapore and Hidgelee by Reg. XIII. 1817. Bengal, Reg. I. 1818. sect. 2; and Reg. I. 1819, sect. 3, cl. 1.* Magistrate is to compel the surrender of the records of a canoongoe.

685. It is the desire of government that the attention of the several magistrates should be given to the adoption of measures for improving and preserving the healthiness of their sudder stations and of their districts generally. C. O. Govt. Bengal, April 21, 1854. Required to improve and preserve the healthiness of sudder station.

686. It is the duty of a magistrate or joint magistrate residing at the same station with the collector or deputy collector, to assume charge of the treasury of the revenue officer, during the authorized or unavoidable absence of the latter. All public functionaries are required to receive charge of public property when the officer having custody is unable, from any circumstances, to retain charge of it. C. O. No. 81 of vol. 3. L. P. Magistrate to assume charge of treasury; and to receive charge of public property.

687. Magistrates should observe great caution, in addressing publications of a general nature to the inhabitants of the provinces; and should refrain from such measures without Proclamations and circular orders, addressed to the

inhabitants and the police, are not to be promulgated without sanction.

the sanction of government, when the delay in obtaining such sanction would not cause material public inconvenience, or at least without the knowledge and concurrence of the nearest local authority to which they are subject. So also magistrates should be particularly cautious in the promulgation of general or circular orders and instructions connected with the police; and they are enjoined to furnish the superintendent of police with a copy of all such orders which they deem it necessary to issue, immediately on their promulgation; or previously, if they are liable to objection. The superintendent of police will direct the magistrates to rescind, alter, or modify any such orders; and session judges will not interfere in any way with the exercise of this power. In more important matters such orders must be submitted to government; and serious notice will be taken of any breach of these rules. C. O. Nos. 112 and 264 of vol. 1; and No. 7 of vol. 3, para. 2. *L. P. Const.* No. 382, paras. 4 and 5. C. O. Sup. Pol. *L. P.* No. 3 of 1838; and No. 6 of 1844.

So also enquiries into the resources of a district.

688. Magistrates are prohibited from making enquiries into the resources of the district, its population, mineral productions, &c., by means of the police, without the sanction of the superintendent of police. C. O. Sup. Pol. *L. P.* No. 7 of 1841.

Public business to be transacted in public offices.

689. In reply to a question whether magistrates can, under any circumstances, be permitted to transact the current business of their offices in their private dwellings, the court deemed it sufficient to observe that, when sitting as a criminal judge, the magistrate must sit in the established court house; and that they did not consider it necessary to enter upon the general question of the powers of a magistrate out of office. But it is said that the practice of transacting public business in private residences is objectionable, and it is interdicted. Const. No. 645. C. O. No. 21 of vol. 2.

Two orders in one case to be kept distinct.

690. When of two orders passed in any case one is appealable to the sessions court and the other final, they are to be kept distinct and separate, and to be recorded in separate proceedings. C. O. No. 135 of vol. 3.

Register books.
* *Appendix B*, No. 4.
† *Ibid.*, No. 5.

691. The magistrate is to keep up two general register books; viz. *First*, a general register of all applications preferred direct to the magistrate;* *Second*, a general register of all reports received from the police darogahs;† and six books of subordinate entry; viz. *First*, a book of heinous offences;‡ *Second*, a book of petty offences;§ *Third*, a book of appeals from subordinate courts;|| *Fourth*, a book of references or proceedings received from other districts;¶ *Fifth*, a book of cases preferred under Act IV. 1840;** and *Sixth*, a book containing all miscellaneous matters.†† All criminal cases are to be entered in the first instance in either of the general registry books, and then transferred to one of the subordinate ones for trial and disposal, excepting of course the cases referred to the subordinate tribunals. When cases are finally decided, they should be sent to the record-keeper, who should keep a general register,‡‡ in which he should enter all cases thus received, giving the number of the case and other particulars, an abstract of the final order, and a note of the part of the office in which he has placed the papers. C. O. No. 144 of vol. 3.

‡‡ *Appendix B*, No. 6.

Magistrate proceeding into the interior.

692. Magistrates ought frequently to visit the interior of their districts, and to make themselves more accessible to the people than they can be at the sudder station. C. O. Sup. Pol. *L. P.* No. 15 of 1839.

693. Whenever a magistrate has occasion to proceed into the mofussil, he is to report to the superintendent of police the date of his departure, and that of his return to the sudder station, as well as the cause of his departure. In the Western Provinces, where the magistracy is still united with the collectorship, it seems that an officer must apply to the commissioner for leave to proceed into the interior of his district; but in the Lower Provinces this permission is no longer required. (v. C. O. No. 7 of vol. 3, para. 5. *L. P.*)—C. O. No 10 of vol. 3, *L. P.* and No. 97 of vol. 2. *W. P.*

694. An officer, whose salary and other allowances amount in the aggregate to less than the rate of 23,000 rupees a year, is entitled to travelling allowance at 5 rupees a day, while actually employed in the interior of his district, or so much within that allowance as to make his total receipts amount to that rate. Bills for this allowance are to be countersigned by the superintendent of police. Govt. Orders Jany. 13, 1840. C. O. Sup. Pol. *L. P.* No. 16 of 1838, and No. 162 A. Feb. 12, 1840.

695. Any covenanted officer, entitled under the existing rules to travelling allowances when absent from his station on duty in the interior of his district, may draw travelling allowance, at his option, either by the distance travelled at the rate of 8 annas a mile, or by the number of days he is absent from the sudder station at the rate of 5 rupees a day; the bill for the charge so incurred being countersigned by the commissioner of the division. Orders Govt. *India*, August 14, 1855. C. O. Govt. *Bengal*, No. 29, October 29, 1855. But this has reference chiefly to those occasions on which an officer may have to quit his station for some sudden and temporary excursion into the interior of his district; and not to the case of a magistrate proceeding on his regular tour of inspection in the cold weather. A magistrate can only draw travelling allowance according to one or the other of the two methods of calculation in the same bill, it being optional to him to select the one which he prefers to go upon for the whole period of his absence from the sudder station. C. O. Govt. *Bengal*, No. 35, June 20, 1856.

696. Whenever an officer of any department, travelling on duty, is entitled to draw travelling allowance reckoned by mileage, and he travels the whole distance, or any portion of the distance, by railroad, he is to charge for such distance at the rate of 3 annas per mile only, if he is an officer entitled to charge ordinarily at the rate of 8 annas or upwards per mile; and at the rate of 1½ anna per mile only, if he is an officer entitled to charge ordinarily at a rate below 8 annas. C. O. Govt. *Bengal*, No 36, August 6, 1856.

697. Government will sanction, as occasion may be shown, the purchase of single-poled tents at the expense of rupees 350 each, for the use of magistrates. Govt. Orders, Sept. 8, 1840. C. O. No. 65 of vol. 3. *L. P.* C. O. Sup. Pol. *L. P.* No. 22 of 1840.

698. If an assistant magistrate, appointed to a sub-division, requires a tent, a report should be made to the superintendent of police. C. O. Sup. Pol. *L. P.* No. 5 of 1846.

699. The session judge is to report to the nizamat adawlut every instance, in which the magistrate has been guilty of neglect, or misconduct, in the discharge of his duty; and

to be reported to the nizamat adawlut ;

omits or refuses to obey his orders. *Beng. Reg. IX. 1793, sect. 63. Ced. Prov. Reg. VII. 1803, sect. 30. C. O. No. 233 of vol. 2 para. 3.*

which court is to enquire and to report to government, or to advise and admonish the offender.

700. Upon a report made in pursuance of the foregoing provision, the nizamat adawlut, after such inquiry as may be judged necessary in proof or explanation of the circumstances stated, is to report the case to government, if it appears to require such notice, with a copy of all proceedings and papers received on the subject of it. And in all cases wherein a covenanted servant of the Company employed in any of the criminal courts, or in any office of police, appears to the nizamat adawlut to have been guilty of neglect of duty, or of other misconduct not expressly provided for by the regulations, that court is either to report the same to government, or to advise and admonish the party, as the case may require. *Beng. and Ben. Reg. II. 1801, sect. 14. Ced. Prov. Reg. VIII. 1803, sect. 24.*

Charge of office upon the death or absence of a magistrate.

701. When the charge of the office of magistrate devolves, from death, indisposition, or other casualty, to the senior assistant on the spot, without any express provision for the same having been made by government, an immediate report of the circumstances of the case is to be made by such assistant to government ; and, till the receipt of orders, he is to confine himself to the discharge of his own duties, and to the exercise of such part of the powers of the magistrate as may be indispensably necessary for the immediate execution of processes from the sessions court and the nizamat adawlut, for preserving the peace of the district, or for such other cases of emergency, as will not admit of delay. *Beng. and Ben. Reg. IV. 1796, sect. 5. Ced. Prov. Reg. XII. 1803, sect. 15.*

What proceedings of his predecessor, if left unsigned, a magistrate may sign.

702. A magistrate having left certain roobacarees unsigned, on leaving the station on sick certificate, the acting magistrate was directed to sign the roobacarees, the orders of which might be recorded in the magistrate's English note-book in his hand-writing, certifying thereon that he had compared them with the note-book. In cases in which no note was recorded, the acting magistrate was directed to pass such order as might, on inspection of the proceedings, appear just and proper, leaving the party dissatisfied with it to appeal in the regular course. *Const. No. 729.*

Powers.

In petty offences extending to 15 days, or a fine of 50 rupees ;

703. The magistrates are empowered to hear and determine, without any reference to the sessions courts, all complaints or prosecutions brought before them for petty offences, such as abusive language, calumny, inconsiderable assaults, or affrays ; and to punish the offender, when convicted, by committing him to prison for a term not exceeding 15 days, or by imposing a fine upon him ; but the fine is in no case to exceed 50 rupees, unless the offender is a zumeendar, independent talookdar, or other actual proprietor of land, paying an annual revenue to government of more than ten thousand rupees ; or a proprietor of ayma land, paying a quit revenue to government exceeding five hundred rupees per annum ; or of lakhiraj land, the annual produce of which is above one thousand rupees ; in which cases such offender is liable to a fine not exceeding 200 rupees. The magistrate is to fix the amount of the fine upon a due consideration of the nature of the case, and the situation and circumstances in life of the offender. *Beng. Reg. IX. 1793, sect. 8. Ced. Prov. Reg. VI. 1803, sect. 8.*

and in cases of petty theft, extend-

704. The magistrates are authorized to hear and determine, without any reference to the sessions courts, all complaints or prosecutions brought before them for petty thefts, when

they have not been attended with any aggravating circumstances, or committed by persons of notorious bad character, and inflict upon the offenders corporal punishment not exceeding 30 ratans, or commit them to prison for a term not longer than one month, according as they think proper, upon consideration of the circumstances of the case. (a) *Beng. Reg. IX. 1793*, sect. 9. *Ced. Prov. Reg. VI. 1803*, sect. 9.

705. In addition to the above powers, magistrates are further empowered, in all cases of conviction before them of any criminal offence punishable under the Mahomedan law and the regulations,—for which the above mentioned penalties are insufficient, or to which the above rules are not expressly applicable, and for which a more severe punishment than six months' imprisonment, with thirty ratans, or a fine of 200 rupees, has not been specifically prescribed, (in which case the prisoner, if there appear grounds for it, is to be brought to trial before the sessions)—to pass sentence of imprisonment not exceeding 6 months, with corporal punishment not exceeding 30 ratans in cases of theft, or in other cases with a fine not exceeding 200 rupees, commutable if not paid, to a further period of imprisonment not exceeding 6 months; so that the entire period of imprisonment, under the sentence of a magistrate, in no case exceeds one year. *Reg. IX. 1807*, sect. 19.

General power extending to six months' imprisonment, plus fine of 200 rupees or additional six months'; —and in cases of theft extending to six months' imprisonment plus 30 ratans;

706. A sentence of imprisonment for one year in lieu of stripes in addition to a sentence of six months' imprisonment passed by a magistrate, is not illegal under the wording of cl. 2, sect. 2, *Reg. II. 1834*. (b) *Const. No. 1183*.

or one year in lieu of stripes;

707. In addition to the sentence which a magistrate is empowered to pass by the above provisions, he is competent in certain cases to require the prisoner to furnish security to keep the peace, or in default to be imprisoned for that additional period, under *Act V. 1848*. *Const. No. 1290*.

and also, in certain cases, one year in default of security.

708. In cases in which a magistrate may sentence to a term of imprisonment with labour, and also a fine commutable to a further period of imprisonment, the power of awarding labor extends equally to the latter period as to the former period; and in both cases the labour is commutable to a fine under cl. 1, sect. 3, *Reg. II. 1834*. If labour is not awarded for the first period, it should not of course be awarded in the second. *Const. Nos. 972 and 1264*.

Labor.

709. If a magistrate considers the sentence, which he is competent to pass under the above provisions, insufficient for the offence, he should commit the prisoner to the sessions. *Const. No. 85*.

When magistrate deems such sentence insufficient.

710. It rests with a magistrate to determine what is a "petty offence" and the commensurate punishment, provided he do not exceed the limitation prescribed as above for such cases. *Const. No. 1353*.

The magistrate is to determine the character of the offence.

711. A conviction by a magistrate in a trial, on the result of which he is expressly authorized by sect. 19, *Reg. IX. 1807* to pass sentence to the extent specified therein, is not

Conviction by a magistrate on trial is not a conviction without trial.

(a) For powers in more serious cases of theft and other crimes, see the sections which specially treat thereof.

(b) For the rules for the substitution of additional imprisonment for corporal punishment, see subsequent section "of corporal punishment."

liable to be impeached as "a conviction without trial," on the ground of its not being a "regular trial before a judge aided by his law officer." Const. No. 259.

Misdemeanor.

712. A magistrate is competent to punish as a misdemeanor, under the general powers vested in him by sect. 19, Reg. IX. 1807, any act which is declared by the regulations to be an offence, but for which no punishment is specified. Const. No. 1305.

Defendant must appear in person to receive sentence.

713. A defendant is bound to appear in person before the magistrate to receive sentence. And sentence should not be passed in the absence of a defendant, who has been allowed to answer and defend a charge against him by attorney. Reports *L. P.* 1854, part 1, page 433.

If doubtful on point of law may apply to law officer,

714. If a magistrate is doubtful as to the law, he should apply to the law officer for assistance. Const. No. 617.

or remembrancer.

715. The remembrancer of legal affairs may furnish magistrates, when acting either administratively or judicially, with his opinion on points of law arising before them, which they may submit to him. *C. O. Sup. Pol. L. P.* No. 4 of 1852.

Sentences beyond competency are quashed.

716. A magistrate having passed a sentence which was beyond his competency, the *nizamut adawlut* quashed the proceedings, and directed him to commit the prisoner to the sessions. Const. No. 684. The session judge in appeal can also quash proceedings under the same circumstances. *See section of Appeals.*

If within competency, he may punish without reference.

717. A magistrate may decide and pass sentence of punishment, without reference to the sessions court, provided he does not exceed his competency under sect. 19, Reg. IX. 1807. Const. No. 121.

Magistrate has not power to punish a prisoner, acquitted by the sessions court, for a minor offence included in the trial of the charge on which he has been acquitted.

718. A prisoner was tried and acquitted by the sessions court on a charge of uttering counterfeit coin with intent to defraud; the magistrate subsequently sentenced the prisoner to a fine for having counterfeit coin in his possession, and not showing good and sufficient cause for the same. This was held to be irregular, because the latter point must have formed part of the trial on the charge of which the prisoner was acquitted by the sessions court. Const. No. 362.

Duties of magistrate and collector vested in one person.

719. It is competent to the governor general in council to authorize a collector of revenue, or other officer employed in the management or superintendence of any branch of the territorial revenues, to exercise the whole or any portion of the powers and duties vested by the regulations in the magistrates or joint magistrates, or to employ a magistrate, joint magistrate, or assistant to a magistrate, in the collection of the public revenue. Reg. IV. 1821, sect. 2.

In such case, oath to be taken;

720. If a collector, or other revenue officer, is so appointed to perform the duties of a magistrate, or joint magistrate, he is to take and subscribe the oath prescribed by sect. 2, Reg. IX. 1793, and cl. 1, sect. 8, Reg. XIII. 1793, with such verbal alterations only, as may be consonant to the nature of the appointment. He is to be guided in the execution of those duties by the regulations which have been, or may be, enacted for the guidance of those officers respectively, and by the orders of the superior courts of criminal judicature in all matters in which a controlling or superintending power is vested in those courts. And he

regulations and orders by which to be guided;

is also to be careful to preserve the records of his judicial and revenue offices separate, and distinct from each other. Reg. IV. 1821, sections 3, 4, and 5.

and separation of records,

721. The magistrate and collector should leave all the business of the office at the sudder station to the joint magistrate and deputy collector, with the aid of the assistants; reserving to himself the general control of the police, and a general knowledge of the manner in which the business is conducted by his subordinates, to enable him to interfere whenever he may, for any special cause, deem it necessary. It is important that the native establishments, as well as the people, should see that the chief control is retained in the hands of the magistrate and collector, and that he is equally anxious in regard to every part of his duties. To effect this, he must limit himself to matters of real importance, leaving the details, under control on his own part, in the hands of his subordinates, and not doing business which can be efficiently performed by them. Such officers are strictly prohibited from holding cutcherry at the same time in the judicial and revenue departments. C. O. No. 151 of vol. 2.

Head of the office to limit himself to matters of real importance, and to leave details to subordinates.

Not to hold cutcherry in both departments at the same time.

722. The duties of a magistrate vested in a collector cannot be delegated to an assistant under sect. 8, Reg. IV. 1821 (which defines the duties of an assistant to the collector) in those cases in which such delegation would be contrary to the provisions of Reg. IX. 1807, Reg. III. 1821, or Reg. I. 1822. Const. No. 603.

What magisterial duties may be entrusted to the assistant collector.

723. The two branches of a magistrate and collector's duty are in fact closely united, and it is impossible precisely to describe how the services of the joint magistrate and deputy collector are always to be called into exercise. But as an impression has sometimes arisen, from the charge of the magistracy being entirely devolved on the subordinate, that the duties of the collector are the higher and more important, the notice of magistrates and collectors is particularly called to the point, that they are considered as vested with the entire responsibility for the due performance of all their duties, and that nothing less than an order of government, which may for peculiar reasons at any time relieve them from a particular portion of their duty, can be pleaded in bar of that responsibility. The magisterial functions are those in which the responsibility should be most felt. Govt. Order *W. P.* No. 703, April 19, 1841.

Responsibility of the whole rests with the head of the office.

724. In case of an officer being vested with magisterial powers, and deputed permanently or temporarily to exercise them within a portion of a district, or of an officer's being placed in charge of a tract of country comprising portions of several jurisdictions, it is competent to government, at the time of erecting such authority, or at any time subsequently, to determine and prescribe by an order, under the official signature of a secretary to government, at what station and in what manner prisoners committed to take their trial before the sessions, for offences perpetrated within the limits assigned to such officer, are to be brought to trial for the same. Notice of such determination is to be given to the nizamat adawlut, which court is to take the necessary steps. Reg. VIII. 1822, sect. 6.

Independent joint-magistracy created.

Government to decide how and where the sessions are to be held.

725. Whenever magistrates require detachments of troops, for the apprehension of public offenders, or for the maintenance of the peace in their respective districts, they are to state in writing, as fully and circumstantially as is practicable, the nature of the service,

Requiring the aid of the military.

Applications how
to be made.

required to be performed, to the officer commanding the corps or companies, from which the detachment is to be furnished; leaving it to the commanding officer, on consideration of the circumstances stated, to judge of the strength of the force which should be employed in the execution of the duty in question. Reg. XI. 1806, sect. 14, cl. 1.

Responsibility of
requiring aid rests
with the magis-
trate; the allotment
of the force rests
with the command-
ing officer; but he
must grant the
required aid.

726. The power thus vested in the magistrate, being founded upon the nature and exigency of the case, which may frequently require promptitude and decision, and will seldom admit of a reference to government; it is the duty of commanding officers immediately to furnish the necessary military aid, whenever applications are regularly and publicly made to them by the magistrates for troops for the maintenance of the peace, or for the support of the general police of the country. By those means the responsibility of calling in the aid of the military rests with the civil magistrates; and the allotment of the force depends upon the officers commanding; who are not, however, on occasions of this nature, to exercise any discretion in granting or withholding the required aid. (a) But as it is, at the same time, essential to restrict the employment of military force to cases of absolute necessity, the magistrates are enjoined to confine their requisitions to cases of that description, and to report to government, whenever they may apply for military aid under this section; at the same time furnishing government with the necessary information respecting the circumstances upon which the application has been grounded. Reg. XI. 1806, sect. 14, cl. 2.

Requisition to
be made only in
cases of absolute
necessity, and ma-
gistrate to report
to government.

Report.

727. The report thus ordered to be sent to government is to be full and distinct; and copies of it are to be sent to the superintendent of police, and the session judge; the latter is to forward it to the nizamat adawlut with his own sentiments on each case, but is not to issue any orders direct to the magistrate. C. O. No. 68 of vol. 2; and No. 7 of vol. 3, para. 4. L. P. Const. No. 40.

Commanding
officer to report
to commander-in-
chief.

728. The officers commanding troops, by whom such detachments are furnished, in pursuance of the applications of the magistrates, are immediately to transmit the necessary reports thereof to the commander-in-chief. Reg. XI. 1806, sect. 14, cl. 3.

**Military
guards.**

729. The magistrates, and other public officers authorized to require permanent guards for the protection of the public treasuries, stores, or other property, are to state fully and

(a) " Upon the duty of officers and troops, during a time of riot and tumult, which had been too long left in doubt, a clear light was also thrown by the mild and gentle wisdom of Chief Justice Tindal, when he presided over the special commission at Bristol. 'It may be safely concluded that if the excitement which led to the defiance of the law at the earlier period of the day had never existed, the weightier crimes subsequently committed by the populace would not have taken place. The beginning of the tumult is like the letting out of water; if not stopped at first, it becomes difficult to do so afterwards; it rises and increases until it overwhelms the fairest and most valuable works of man. The soldier is still a citizen lying under the same obligation and invested with the same authority to preserve the peace of the kingdom as any other subject. If the one is bound to attend the call of the civil magistrate, so also is the other; if the one may interfere for that purpose, when the occasion demands it, without the requisition of the magistrate, so may the other too; if the one may employ arms for that purpose, when arms are necessary, the soldier may do the same. Undoubtedly the same exercise of discretion, which requires the subject to act in subordination to, and in aid of the magistrate, rather than upon his own authority, before recourse is had to arms, ought to operate in a still stronger degree with a military force. But where the danger is pressing and immediate, where a felony has actually been committed, or cannot otherwise be prevented, and from the circumstances of the case no opportunity is offered of obtaining a requisition from the proper authorities, the military subjects of the king, like his civil subjects, not only may but are bound to do their utmost, of their own authority, to prevent the perpetration of outrage, to put down riot and tumult, and to preserve the lives and property of the people.'" *Townsend's Modern State Trials*, vol. 2, page 279.

circumstantially the nature of the service necessary to be performed to the officer commanding the corps from which the guards are required. On receipt of such information, the commanding officer is to furnish guards of such strength as he may deem necessary; provided that no public objection occurs to a compliance with the application, and that he is satisfied that the civil officer is entitled to make such application by the general rules and usages of the service. But the commanding officer is at liberty, in case he deems it necessary or proper on any public grounds, to suspend compliance with the application, and to refer the case to the commander-in-chief, who is to forward the representation to government for its decision, or to pass such orders as may appear to him to be proper. Reg. XI. 1806, sect. 15, cl. 1, and sect. 18.

Applications for.

730. No augmentation is to be made in the number or strength of permanent guards without the express sanction of government. Reg. XI. 1806, sect. 15, cl. 2.

Permanent guards not to be increased.

731. The same rules are to be observed in applications for temporary escorts, as in those for permanent guards. Reg. XI. 1806, sects. 16 and 18.

Temporary escorts.

732. Magistrates and other officers in the judicial department are to transmit to government, on the first of each month, a statement of the guards, detachments, and escorts employed by them in the preceding month. Reg. XI. 1806, sect. 17.

Monthly statements of guards employed to be sent to government.

733. Whenever it appears advisable to a magistrate to depute his assistant, or any European officer acting under his authority, being a covenanted servant of the Company, to make a local investigation within the limits of his district, for the purpose of speedily and satisfactorily determining a boundary dispute, or other subject of inquiry in the foudaree court, which from the circumstances of the case appears to require the deputation of an European officer, instead of the employment of a local police officer, it is competent to the magistrate to order such deputation, and to furnish the officer so deputed with such instructions as appear necessary;—provided that such instructions are not inconsistent with the general regulations in force. Reg. XI. 1824, sect. 2.

Deputation by magistrate of European officer.

Power to depute and to furnish instructions.

734. Whenever the deputation of an European officer may be ordered at the request of a party in a suit, or for the purpose of inquiring into any local question of private right between two or more individuals relative to a case depending in the foudaree court, it is at the discretion of the magistrate, by whom the deputation is ordered, or who is to determine the case to which it relates, to declare the whole or any part of the usual deputation allowance receivable by the officer so deputed, as well as every other authorized and necessary expense attending the local inquiry, to be payable by the party against whom the case is adjudged; or proportionally by each of the parties, if this appear just on due consideration of all the circumstances of the case. But if in any instance the magistrate is of opinion that it would not be proper from indigence or other cause to render the parties, or either of them, answerable for the whole or any part of the deputation allowance, he is authorized to discharge the same (subject to the usual audit) on the part of government. Reg. XI. 1824, sect. 3.

May declare by whom the deputation allowance is to be payable.

735. Such deputation charges, if not paid by the parties, are to be realized by the same process as costs of suit in civil cases; and a commissioner of circuit is competent to exercise the same power as the magistrate in ordering the deputation of an assistant duly

Charges how to be recovered; and power of superior courts.

qualified (i. e. vested with special powers), and to adjudge the payment of his deputation charges. Const. No. 678.

Deputations to be reported to government ;

736. Such deputations are to be immediately reported to government, with a statement of the circumstances of the case ; and the return of the officer so deputed is also to be immediately reported. Reg. XI. 1824, sect. 4.

and to the session judge, who may revoke.

737. A report of such deputation is also, in every instance, to be made without delay to the session judge, together with a copy of the proceedings : and if the reasons stated for the deputation do not appear sufficient, and the judge deem it unnecessary, or inexpedient, he is competent to revoke it, transmitting at the same time copy of his order with the proceedings and papers connected therewith to the nizamat adawlut, who will issue such final orders as they may deem just and proper. Reg. XI. 1824, sect. 5.

Only to be made in cases of urgency. Parties may attend.

738. Such deputations are not to be made except in cases of urgency, and for a short period. The parties are at liberty to attend the local investigation in person, or by any authorized agent. Reg. XI. 1824, sect. 6.

SECTION XI.

OF THE FUNCTIONS OF THE JOINT MAGISTRATE.

Appointment.

739. Whenever it appears necessary for the despatch of public business, or for any purpose of police, or otherwise, to appoint an assistant magistrate^(a) in any zillah or in any part thereof, it is competent to government to make such appointment under the provisions contained in this regulation. Reg. XVI. 1810, sect. 4.

Oath.

740. Previously to entering upon the execution of his duties, the joint magistrate is to take and subscribe the oath prescribed for the office of magistrate, with such verbal alterations only as may be consonant to the nature of the appointment. Reg. XVI. 1810, sect. 5.

To be guided by the regulations. Invested with full powers of magistrate.

741. The joint magistrate is to be guided by the general regulations, as far as they are applicable to his duties ; and, for the due execution of such duties, he is invested with the same powers, as by the regulations are vested in the magistrate. Reg. XVI. 1810, sect. 6.

To be guided by the instructions of the nizamat adawlut.

742. The special duties to be performed by a joint magistrate are to be determined by government ; but in all matters relating to practice and form, as well as in all points not specifically provided for by this, or any other regulation, he is to be guided by the instructions of the nizamat adawlut. Reg. XVI. 1810, sect. 7.

(a) The reader will mark the difference between an assistant magistrate, and an assistant to the magistrate : the former is now always called a joint magistrate, which term is exclusively applied by the regulation, from which the above quotation is made, to such magistrates as were vested (by section 3) with a concurrent authority in a contiguous jurisdiction. To prevent confusion, the title of joint magistrate, as now in use, is substituted throughout the text for that of assistant magistrate, which is obsolete. The rules here quoted have, of course, no application to independent joint magistrates who are in fact magistrates of subordinate districts in which there is no session judge, the sessions being held by the judge of a neighbouring zillah.

743. All process issued by a joint magistrate is to be under his official seal and signature; and is to be executed by the officers employed under himself, or by those of the magistrate, as circumstances may direct, and may appear most conducive to the public service. The magistrates, their police officers, and all other persons acting under them, are required to aid and support the joint magistrates, appointed under this regulation, in the execution of any process issued by them under their official seals and signatures; and resistance to any process so issued is punishable in like manner as resistance to the process of a magistrate. Reg. XVI. 1810, sect. 8.

Process of, how to be executed.

744. A joint magistrate (when not acting as magistrate, in the absence of the latter) is to be considered subordinate to the magistrate, in the general discharge of his official duties, as far as is consistent with the provisions contained in this regulation. In all cases of a difference of opinion between the magistrate and a joint magistrate, the latter is to conform to the directions of the former, until a reference can be made to the superior courts, for a determination upon the subject. But it is not intended that any appeal should lie to the magistrate from the sentence of a joint magistrate, whether for punishment, or acquittal, or from his orders for the commitment of prisoners, or holding them to bail to take their trial at the sessions; the joint magistrate being vested with the full powers of magistrate in all such cases, within his jurisdiction, and his proceedings therefore being open to the regular control of the superior courts. Reg. XVI. 1810, sect. 9.

Joint magistrate subordinate to magistrate.

Appeal from, does not lie to magistrate.

745. When not stationed at the same place with the magistrate, he is authorized, in all cases requiring despatch, to correspond directly with government, the nizamat adawlut, the session judge, or other public authorities. But all monthly and other periodical reports or accounts, which may be required from a joint magistrate, and generally all official communications, which he may have to make to any superior authority, and which may not require immediate despatch without passing through the magistrate, are to be transmitted through the channel of the latter, provided he is not absent from his jurisdiction. Reg. XVI. 1810, sect. 10.

May correspond directly with superior authorities in urgent cases, but generally through magistrate.

746. The police and other establishments of native officers, employed under a magistrate, and not ordered to be placed under the immediate authority of a joint magistrate, will continue under the usual control of the magistrate. But all native officers so employed are directed to furnish any joint magistrate, having authority over them under this regulation, with every information required from them, as well as generally to obey all orders issued to them by him, on pain, in case of neglect or failure, of being fined, suspended, or dismissed from office under the authority, or at the representation of such joint magistrate according to the regulations in force. Government further retains a discretion of placing any part of the police, or other public establishments, under the immediate control of a joint magistrate, when it may appear expedient. Reg. XVI. 1810, sect. 11.

POLICE.
How far subordinate to.

May be placed under his immediate control.

747. When the police establishment of the thanas, within the limits of a joint magistrate's jurisdiction, have not been placed under his immediate authority, by an order of government, in conformity with the above provision, the whole of the native officers composing those establishments continue under the control of the magistrate of the district. Applying

When not so, under the control of magistrate.

Example.

cations for leave by the officers of the thanas so situated, should be forwarded to the magistrate, through the joint magistrate, to enable the latter to state any objections which he may have to offer against a compliance. Const. Nos. 210 and 232.

Invested with exclusive control in their local jurisdictions.

748. But by an order of government, dated January 6, 1825, it was directed that the joint magistrate should always possess exclusive control over the police establishments maintained in the local jurisdictions assigned to them. C. O. No. 306 of vol. 1.

GOVERNMENT ORDERS NOV. 1ST. 1831.

Residence.

Subordinate to magistrate.

With full powers of magistrate unless interdicted.

Responsibility when not independent.

Appeal.

Responsibility, when independent.

Appeal.

Subject to general instructions of magistrate.

Report of delegation of duties to, by magistrate.

Irresponsibility when acting under general instructions.

Power of session judge and superintendent of police to interfere in arrangements.

749. Joint magistrates shall ordinarily reside at the sudder station of their principals. Government Resolution, November 1st, 1831.

750. *Rule 4.* A joint magistrate is in all respects subordinate to the magistrate, and is required to obey any orders the latter may see fit to issue. *Rule 6.* He is competent to exercise the full powers of a magistrate, unless interdicted from the exercise of such powers by his superior, who is of course at all times competent to limit, or extend, the jurisdiction of his subordinate. *Rule 10.* Whenever the joint magistrate is acting in subordination to his principal without any independent authority, all acts done by him are held to be subject to his sole responsibility; but having undergone the revision of the magistrate are subject to their joint responsibility, and are appealable to the session judge. *Rule 11.* In like manner all acts done by the joint magistrate, when acting independently of his principal, rest on his own responsibility, and all appeals from such acts lie direct to the session judge. It is at all times competent to the magistrate to issue any general instructions, which he may deem necessary to his subordinate; and the subordinate officer, whenever he is officiating as magistrate, is to conform to all orders he may receive from him, provided of course that such principal is resident within the limits of the district. It is not necessary for the magistrate to make a report to the superintendent of police and session judge, for their respective consideration and orders, in cases, where the joint magistrate may exercise the full powers of the magistrate, except where he deems it necessary or expedient to divest himself altogether, for the time being, of magisterial duties; and in all such cases those officers are to report the circumstance to government. *Rule 12.* It is also to be clearly understood that the magistrate is competent to resume at any time the duties, which he may have temporarily confided to the joint magistrate. *Rule 13.* In all instances in which a joint magistrate is officiating as magistrate, and receives general or specific instructions from his superior, he is to be held exempt from all responsibility which may attach to a punctual observance of such instructions. *Rule 15.* The superintendent of police is authorized, whenever he may think proper, to interfere with any arrangements in regard to matters of police made by the magistrates for the employment of joint magistrates or other assistants, or the distribution of business to be assigned to those functionaries; and the session judge may exercise the same power in all matters connected with the trial and decision of cases. Any interference of this nature will of course be exercised on the responsibility of the officer so interfering, and not without apparent necessity; and magistrates, after obeying the order, are allowed a reference to the nizamat adawlut or government, as the case may be. Government Resolution, November 1st, 1831.

751. As under the above orders, joint magistrates are competent and required to exercise the full power of magistrate, unless interdicted from the exercise of such power by their superior; they are empowered to try appeals from the orders of *sudder ameens* in petty criminal cases. Const. No. 1231.

May try appeals from subordinates.

752. But deputy magistrates, and uncovenanted judges exercising magisterial powers, are not to exercise appellate authority; and petitions of appeal, whether from covenanted or uncovenanted subordinates, are not to be referred to them for decision. C. O. No. 22 of vol. 4. *L. P.*

But no other officers exercising full powers can try appeals.

753. A joint magistrate is competent, under the 6th rule of the above resolutions, unless expressly interdicted by the magistrate, to commit prisoners to the sessions; and it is not necessary for the magistrate to revise his commitments: nor can the magistrate reverse an order of commitment made by a joint magistrate residing at the *sudder station* without independent jurisdiction. Const. Nos. 911 and 906.

Competent to make commitments to the sessions.

754. Under Act XXXI. 1841, all appeals from a joint magistrate, of whatever powers, are appealable exclusively to the session judge. Const. No. 1326.

Appeals from.

755. A magistrate may refer to a joint magistrate, not holding independent jurisdiction, criminal cases for report; though, with reference to the respective powers of those officers, the measure should be resorted to as seldom as possible. Const. No. 1234.

Cases may be referred to, by magistrate, for report.

SECTION XII.

OF THE FUNCTIONS OF THE ASSISTANT TO THE MAGISTRATE.

756. Previous to an assistant's entering upon the exercise of judicial authority, he is to take and subscribe before the magistrate the following oath;—"I, A. B., assistant to the magistrate of the *zillah* of —, solemnly swear, that I will, to the best of my ability, assist the said magistrate in preserving the peace of the *zillah* over which his authority extends; that I will act with impartiality and integrity, and will not exact or receive, nor knowingly allow any other person to exact or receive, directly or indirectly, any fee, emolument, or reward whatsoever, in the execution of any matter relating to the duties of my office, excepting such as the orders of government do or may expressly authorize; and that I will perform the duties of my office, according to the best of my knowledge, abilities, and judgment, conformable to the regulations that have been or may be passed by the governor general in council. So help me GOD." *Beng. and Ben. Reg. XIII. 1797, sect. 2. Ced. Prov. Reg. XII. 1803, sect. 17.*

Oath.

757. Under the above provisions, an assistant, on removal from one district to another, whether under the orders of government or the commissioner of the division, should take the prescribed oath of office before the magistrate of the *zillah* to which he may have been newly appointed: and the magistrate is, in such cases, competent, and indeed required by the

Must be taken on entering upon office, whether taken before in another district or not.

To be recorded in the office and reported to the court.

above provisions, to administer it to him without any special orders from government on the subject. Const. No. 850. And so long as the law remains in its present state, it is necessary that such declarations, should be made in obedience to it. They should be recorded in the office in which they are made, so as to be forthcoming in case of need, and the fact reported to the court. C. O. January 6, 1854. *L. P.*

Powers.

Judicial powers to be exercised by, the same as the (minor) powers of the magistrate.

In the exercise of such powers, to be guided by the regulations enacted for the guidance of magistrate.

But may not exercise the higher powers of magistrate.

Powers limited to 15 days' imprisonment and 10 rupees fine, or additional 10 days,

and in cases of theft to one month's imprisonment in addition to corporal punishment

758. An assistant, who has taken and subscribed the foregoing oath, is authorized to exercise the judicial powers vested in the magistrate by the established regulations, as far as may be necessary to enable him to perform the duties committed to him by the magistrate. *Beng. and Ben. Reg. XIII. 1797, sect. 3. Ced. Prov. Reg. XII. 1803, sect. 18.*

759. Assistants, exercising judicial powers under the above provisions, are to be guided in every respect by Reg IX. 1793, and such other regulations as have been or may be hereafter enacted for the guidance of magistrates, as far as the same may be applicable to the duties committed to them respectively. *Beng. and Ben. Reg. XIII. 1797, sect. 4.(a)*

760. But assistants are not, under the above provisions, to exercise the powers vested in the magistrates by sect. 19, Reg. IX. 1807. In the performance of any duties committed to them, they are not to exceed the powers vested in them by the regulations heretofore in force, except that, in the cases provided for by sect. 8, Reg. IX. 1793 (*Ced. Prov. sect. 8, Reg. VI. 1803*), wherein it may appear proper to impose the fine thereby authorized, in addition to 15 days' imprisonment, both the stated fine and the imprisonment may be adjudged, with an eventual commutation of the fine, if not paid, to further confinement for a period of 15 days, making the entire term of imprisonment, if the fine be not paid, one month of 30 days. In like manner, in charges of petty thefts, provided for by sect. 9, Reg. IX. 1793 (*Ced. Prov. sect. 9, Reg. VI. 1803*), they may, if it appear just and requisite, adjudge the one month's imprisonment in addition to the corporal punishment. In any case wherein the offence proved against the prisoner appears to require a more severe punishment than he is hereby authorized to adjudge, he is not to pass any sentence, but is to submit his proceedings to the magistrate, who, after holding any further proceedings he may deem necessary, if satisfied of the guilt of the prisoner, is to pass sentence on, or to commit or hold him to bail for trial before the sessions, according to the nature and circumstances of the case. Reg. IX. 1807, sect. 20.

SPECIAL POWERS.

Applications for increased powers to be made to government direct.

May be conferred on assistant duly qualified.

761. Applications made to session judges by magistrates, with a view to their assistants being invested with special powers or the powers of a joint magistrate, are to be submitted by the session judges to the government direct. C. O. No. 11 of vol. 4. *L. P.*

762. When the nizamut adawlut are of opinion, either from a report of the magistrate or from other information, that an assistant is duly qualified by his experience, industry, and abilities, to be entrusted with special powers, they are to report to government. On the receipt of such report, or on other information, the government may invest such assistant with the special powers described below. Reg. III. 1821, sect. 2, cl. 1 and 2.

Not exceeding 6 months' imprisonment and corporal

763. Assistants may be especially empowered, in all cases referred to them in which an individual may be convicted of any criminal offence punishable under Mahomedan law

(a) There appears to be no corresponding enactment for the Ceded Provinces.

and the regulations,—for which the penalties authorized above appear insufficient, and for which a more severe punishment than 6 months' imprisonment with thirty ratans, or a fine of two hundred rupees, has not been specifically prescribed,—to pass sentence of imprisonment not exceeding 6 months, with corporal punishment in cases in which corporal punishment is authorized by the regulations, or in other cases with a fine not exceeding 200 rupees commutable, if not paid, to a further period of imprisonment not exceeding 6 months, so that the entire period of imprisonment in no instance exceeds one year. Reg. III. 1821, sect. 2. cl. 3.

punishment or fine of 200 rupees commutable to additional 6 months.

764. If the offence proved against the prisoner appears to require a more severe punishment than the foregoing, he is not to pass any sentence, but is to submit his proceedings to the magistrate, who, after holding any further proceedings he may deem necessary, if satisfied of the guilt of the prisoner, is to pass sentence on, or to commit or hold him to bail for trial before the sessions, according to the nature and circumstances of the case. Reg. III. 1821, sect. 2, cl. 4.

If more severe punishment required, case to be submitted to magistrate.

765. An assistant is not competent to pass an order for commitment in cases wherein the offence appears to require a more severe punishment, than he is competent to adjudge; but he must submit his proceedings to the magistrate. Const. No. 191.

No power to make commitment ; .

766. An assistant is not competent to make commitments to the sessions, unless he has been appointed by government to act as magistrate: consequently an assistant directed to take charge of the office at the sudder station during the absence of the magistrate in the interior cannot exercise that power. Const. No. 686.

even when in charge of office.

767. An assistant is not competent to take cognizance of complaints against European British subjects to the extent specified in 53d Geo. III. cap. 155, sect. 105. The powers in question can be exercised only by a person possessing the full powers of magistrate. Const. No. 595.

Cannot take cognizance of charges against Europeans.

768. Upon the death, removal, or resignation, of any assistant invested with special powers, the person succeeding to the office of assistant is in no case entitled to exercise such special powers without the previous sanction of government; and it is at all times competent to government to revoke the special powers, entrusted to an assistant, for any cause which, in the opinion of government, may render the adoption of that measure expedient. Reg. III. 1821, sect. 2, cl. 7.

Special powers do not descend to successor; and government may revoke.

769. Assistants are to perform all such ministerial acts as may be prescribed to them by the magistrates, consistently with the regulations; but are in no cases to exercise judicial powers except in cases in which they are expressly authorized to exercise such powers by the regulations. *Beng. and Ben. Reg. IV. 1796, sect. 6. Ced. Prov. Reg. XII. 1803, sect. 16.*

Duties.

To perform ministerial acts prescribed by magistrate ;

770. Magistrates are authorized to employ their assistants in the execution of such part of their prescribed duties as, from the extent of their general business, or other cause, they are unable to give due attention to themselves. *Beng. and Ben. Reg. XIII. 1797, sect. 2. Ced. Prov. Reg. XII. 1803, sect. 17.*

and such part of the duties, as magistrate may make over.

Magistrate's order of reference to be recorded on his proceedings, with instructions.

771. Whenever a complaint or charge of a criminal nature is referred by a magistrate to his assistant for examination, under the foregoing provisions, the order of reference is to be recorded on the magistrate's proceedings with instructions, whether to submit the proceedings held upon the examination for the magistrate's decision, or whether the determination upon the charge is to be passed by the assistant, if it be such as he is authorized to determine under the regulations. As far as the general duties of the magistrates may admit, they are directed to examine the proceedings held by their assistants in such cases.(a) Reg. IX. 1807, sect. 21.

772. The same rule is applicable to cases referred to assistants vested with special powers. Reg. III. 1821, sect. 2, cl. 5.

Power in cases referred for decision, and report.

773. In cases referred to an assistant for trial and decision, he may acquit or convict according to his judgment. But in cases referred merely for report, he has no power to release the prisoners, but should submit his opinion in the required report to the magistrate, who will pass the proper order. Const. No. 612.

Magistrate may recall cases referred.

774. Magistrates are authorized at all times to recall from their assistants any depending cases, which may have been referred to them under the above provisions, and which for the more speedy administration of justice, or for any other reason, the magistrates may deem it proper to determine themselves in the first instance. Reg. III. 1821, sect. 2, cl. 6.

Government may empower assistants to take up cases without reference ;

775. It is competent to the local government of each of the divisions of the Bengal presidency, to empower assistants to magistrates, and also deputy magistrates under Act XV. 1843, to exercise the powers of a covenanted assistant, to receive and try, without reference by the magistrate, all or any of such charges as they are now competent to try upon reference by the magistrate, subject to appeal from their decisions according to the provisions of sect. 2, Act XXXI. 1841. Act X. 1854, sect. 1.

but the magistrate has power to recall any such cases.

776. Magistrates, or joint magistrates, may at any time call from any of their assistants, or from any deputy magistrate subordinate to them, any case pending before any such assistant or any such deputy magistrate under the provisions of this Act, which for any reason the magistrate, or joint magistrate, may deem it proper to determine himself in the first instance. Act X. 1854, sect. 3.

During the cold season assistants are to be employed exclusively on revenue duties in the interior of the district.

777. In answer to a suggestion of the board of revenue, that all magistrates should be instructed to make their tours in the interior of their districts only during the months of November and December, in order that assistants might be placed at the disposal of collectors for employment in the interior of their districts during the months of January, February and March,—the government replied that they concurred with the board in attaching great importance to the employment of assistants in revenue work in the interior of their districts during every part of the cold season when there is any such work to be done ; and the board were authorized to employ assistants at that particular time of the year, whenever there is such work to be done, as though the whole of their time were at the disposal of the collector.

(a) For rules regarding the power of magistrate to revise the orders of his assistant, see chapter 5 of this book.

There is no necessity, it was said, for a rule restricting the tours of magistrates to two particular months. Magistrates should be considered in charge of their own offices, in whatever part of the district they may be. As regards the superintendence of the jail, which is the only duty a magistrate cannot personally perform when out in the district, he must make the same arrangements, when the assistant is employed in the district in settlement or other duties under the collector, as he would make if there happened to be, as is frequently the case, no assistant attached to his district at all. Govt. Orders No. 761, August 16, 1850 in C. O. S. B. R. No. 62, September 3, 1850. C. O. Sup. Pol. *L. P.* No. 12 of 1850.

778. While assistants are employed in the transaction of revenue duties in the interior of the district, there is no objection to their taking up criminal business connected with those parts of the district in which they may be employed, on the distinct understanding that the assistants shall only take up criminal cases so far as their revenue duties during the period in question may give them leisure, and so as not to interfere with the due discharge of the latter. When assistants have full powers, they might be instructed in special cases to receive petitions direct; but in general it will be advisable for the magistrate to refer cases to the assistants with reference to the understanding noted above. C. O. Sup. Pol. *L. P.* No. 2 of 1854.

Such criminal work as they can take up without detriment to their revenue duties, may be made over to assistants so employed in the interior.

779. Magistrates are to require their assistants to pay frequent visits to the jail, in order that they may make themselves thoroughly acquainted with all existing rules regarding it. Particular attention should be paid to the discipline and classification of the prisoners; the work on which they are employed; their food and clothing; the cleanliness and ventilation of the jail wards; the checking of all abuses; the conduct of the darogah and his subordinates; and, in fact, all the details which form part of the internal economy and control of a jail. The assistant must invariably enter the result of his inspection in the visiting book of the jail, for the information and orders of the magistrate. Orders of Govt. in C. O. Insp. Jails No. 55, October 18, 1856. *L. P.*

Required to visit the jail frequently; and to make themselves acquainted with all the jail rules.

780. Where head assistants to magistrates are appointed, it is sufficient to declare that they are to perform all acts which may be required of them by the magistrate; and that they are in like manner to obey the joint magistrates, when the latter are acting independently. Government Resolution, November 1, 1831, para. 14.

Head assistants.

781. Session judges and magistrates are enjoined to report to the nizamut adawlut, whenever the ministerial officers attached to their courts, who are covenanted servants of the Company, are guilty of neglect or misconduct (other than corruption or extortion) in the discharge of their duty. *Beng. Reg.* XIII. 1793, sect. 10. *Ced. Prov. Reg.* XII. 1803, sect. 13.

Assistants guilty of neglect or misconduct.

782. In such cases the nizamut adawlut is to be guided by the same rules as in the case of magistrates guilty of neglect or misconduct; see para. 699.

783. Every assistant, whatever be his powers, and every joint magistrate and deputy collector of the 2nd grade, if not in charge of a sub-division or of some independent office of

Applications for leave of absence.

higher rank, requiring leave of absence, is to write a letter addressed to the collector of his district, to be submitted first to the magistrate, who, if he sees no objection to a compliance with the application, will endorse the letter with a statement to that effect ; and, if otherwise, will briefly state on the letter his reasons for objecting to a compliance. The letter with the magistrate's remarks will then be forwarded by the magistrate to the collector, who will transmit it in original, similarly further endorsed by himself, to the commissioner. This latter officer will use his own discretion in forwarding the original application directly to the government for sanction, or in declining to do so. Govt. Order in C. O. Sup. Pol. L. P. No. 9 of 1850.

SECTION XIII.

OF THE FUNCTIONS OF THE DEPUTY MAGISTRATE.

Power to appoint.

784. It is competent to the local governments of both divisions of the Bengal presidency to appoint in any zillah or district one or more uncovenanted deputy magistrates with the powers hereinafter specified. Act XV. 1843, sect. 1.

Declaration to be made and subscribed.

785. Every person appointed to the office of deputy magistrate under this Act, previously to entering upon the execution of the duties of his office, is to make and subscribe before the magistrate of the district to which he is appointed, a declaration according to Act XXI. 1837. (a) Act XV. 1843, sect. 2.

May be employed as a judicial or police officer.

As judicial officer, powers ;

* See para 775. and appeals from.

As a police officer, in all respects subordinate to magistrate.

786. A deputy magistrate, appointed under this Act, is capable of being employed as a judicial officer, or as an officer of police, or both, at the discretion of the local governments. As a judicial officer he is to exercise the powers of a covenanted assistant under Regulations XIII. 1797, IX. 1807, or III. 1821, or the full powers of a magistrate, according to such orders as may from time to time be issued in that respect by the local government ;* and in such cases he is subject to such authority in regard to appeals from his decisions and judicial orders, as is provided for the decisions and orders of a covenanted assistant under the above regulations, or of a magistrate respectively. As an officer of police he is in all respects subordinate to the magistrate under whom he is placed ; he is to exercise such powers as the government, or the magistrate with the sanction of government, commits to him ; and is to obey all orders that are issued, and perform all duties assigned to him by that functionary, who is at all times competent, subject to such orders as he receives from the local government, to extend, limit, or resume the the powers committed to such deputy. Act XV. 1843, sect. 3.

Commitments.

787. Officers invested with the full powers of magistrate are competent to make commitments to the sessions in cases referred to them, which are beyond their competency to decide. C. O. No. 173 of vol. 3.

(a) The purport of Act XXI. 1837, is to make it lawful for government to substitute a declaration for any oath required to be taken by law. The deputy magistrate must be required to make and subscribe a declaration to the same effect as the oath administered to covenanted assistants. See paras : 756 and 757.

788. Uncovenanted officers in the revenue and judicial departments may hold at the same time with any other office the office of deputy magistrate. Act XV. 1843, sect. 4.

Office may be held conjointly with other office.

789. A deputy magistrate is not to be dismissed from office for misconduct without the sanction of the local government. Whenever there is reason to believe that a deputy magistrate is disqualified by neglect, incapacity, or corruption, for continuance in office, a report is to be submitted by the magistrate for the consideration and orders of government, which is competent to suspend him, and to order a further enquiry into his conduct, or to direct his immediate dismissal, as may appear just and proper. Act XV. 1843, sect. 5.

Dismissal.

790. Deputy magistrates in charge of sub-divisions are allowed a travelling allowance of three rupees per diem whilst moving about their jurisdiction. Those residing at sudder stations, and drawing an allowance of 200 rupees per mensem, are allowed five rupees a day when deputed to the interior on duty. C. O. Sup. Pol. L. P. No. 7 of 1847.

Travelling allowance.

791. Deputy magistrates, located upon full salaries in the mofussil, are expected to pay the expenses of cart-hire for conveying their tents, records, &c. out of their own allowances. Govt. to Sup. Pol. L. P., No. 1184, June 3, 1846.

Cost of moving records, tents, &c.

SECTION XIV.

RULES FOR THE GUIDANCE OF DEPUTY MAGISTRATES AND ASSISTANTS IN CHARGE OF SUB-DIVISIONS.

By Government Orders, Bengal, February 18, 1846.

792. *Rule 1.* After assuming charge of their sub-divisions, deputy magistrates and assistants will hear and pass orders on all reports which may be submitted by the police, receiving petitions from the inhabitants within their jurisdiction, and deciding, or committing all cases brought before them, excepting such as the magistrates may think proper to call for and decide themselves. As the deputies and assistants will have been vested with the full powers of a magistrate, it is unnecessary to lay down any special rules for their guidance as judicial officers. It will be sufficient to enjoin upon them a strict adherence to the government regulations and the rules and orders of the court of nizamat adawlut and of the superintendent of police of the lower provinces.

If with full powers of magistrate.

Reports, petitions and cases.

793. *Rule 2.* As the great object of stationing officers in the interior of districts, is to relieve the inhabitants within their divisions from the delays and inconveniences to which they are now subject in their applications to station courts; and 2ndly, to secure a more effectual control, than has hitherto been possible, over the police employed in distant thanas, the deputies and assistants are particularly enjoined to avoid all unnecessary detention of parties in suits before them, to render themselves freely accessible to people of all classes, to listen to their communications with temper and consideration, and during the dry weather to be as much as possible upon the move, visiting the thanas under them, investigating serious

To avoid detention of parties, to make themselves accessible, and to move about the district;

and to take measures of police for the maintenance of good order in the district.

offences on the spot where they occur, acquiring every possible information, from every available source, as to the characters of the police officers and the landholders, or middlemen, of the sub-division, ferreting out receivers of stolen property and such parties as make a practice of harbouring robbers, and generally (after consultation, if necessary, with the magistrate) taking such measures as may appear most advisable for the suppression of crime and the maintenance of peace and good order.

On the occurrence of a heinous offence.

794. *Rule 3.* On the occurrence of any heinous offence, they will report the circumstances to the magistrate either in English, or in the vernacular, as they may find most convenient, and will keep that officer weekly informed of the progress and result of their proceedings for the apprehension and conviction of the parties concerned, paying due regard to any instructions which they may receive from him. The magistrate will forward copies of these reports to the superintendent of police lower provinces, with as little delay as possible.

In a case of violent or unnatural death.

795. *Rule 4.* In cases of murder, homicide, or unnatural death accompanied with suspicious circumstances; as also in cases of severe wounding; the corpse, or wounded person, will be forwarded by the police, as soon as the customary sooruthal has been recorded, to the officer in charge of the sub-division, should his station be in the direct line between the place where the investigation is going on and the sudder station of the magistrate. The deputy, or assistant, after inspecting the corpse, or wounded person, as the case may be, will lose no time in sending the same on to the sudder station for examination by the civil surgeon. But, should the deputy or assistant be absent from the subordinate station when the corpse or wounded person arrives there, or should his station be out of the direct line, the corpse, or wounded person, shall be forwarded on to the sudder station without awaiting the return of the above officer. The civil surgeon's report will be addressed to the officer in charge of the sub-division who, whenever such may be necessary, will request the magistrate at the sudder station to take the deposition of the medical officer and furnish him with a copy thereof, in order to enable him to judge as to the propriety of making further enquiries, and to assist him in drawing up the calendar of commitment.

If subordinate to two magistrates.

796. *Rule 5.* Deputies, subordinate to two or more magistrates, will use their own discretion, as to priority in the execution of orders simultaneously received from different superiors.

Correspondence with superior authorities.

797. *Rule 6.* The deputy magistrates will invariably correspond with the superior authorities through the magistrates to whom they are subordinate, except in cases of emergency, where delay would be mischievous, or highly inconvenient.

Statements.

798. *Rule 7.* The monthly statements of work disposed of and pending must be despatched by the deputy magistrates and assistants on or before the 5th of each month, and the yearly statements not later than the 10th of January. On each monthly statement the subordinate officers will make a note of the number of times, during the month, on which they have proceeded on duty into the interior, and the number of days they have on that account been absent from their stations.

799. *Rule 8.* Such parties as the deputies or assistants may sentence to simple imprisonment, not exceeding one month, will be retained in custody in the place set apart for such parties at the head quarters of the sub-division.

Disposal of prisoners sentenced to simple imprisonment for one month ;

800. *Rule 9.* Prisoners whose sentences may exceed one month, together with all prisoners sentenced to hard labor, and prisoners committed to the sessions, should be forwarded to the sudder station under a guard of burkundazes, as often as may be practicable ; but never less seldom than once a week ; and care should be taken to transmit along with them their warrants and the calendars of commitment, together with such other papers as may be necessary. The term of imprisonment of prisoners sent to the sudder station will be calculated from the date of sentence.

exceeding one month ; or for any period with labor.

801. *Rule 10.* By the same opportunity the subordinate officers will remit such sums as they may have received on account of fines, deposits, sale of unclaimed property, &c. transmitting along with them copies of their weekly cash account, which must give clearly the different heads of receipts. Deposits on account of diet money of witnesses need not be remitted to the sudder station, the unexpended balances of the same being re-payable according to law, on the decision of each case, to the depositors.

Money received as fines, deposits, &c.

802. *Rule 11.* All refunds of fines, deposits, (with the above exception) &c., will be made from the magistrate's treasury, on receipt of a roobakaree from the deputy magistrates, or assistants, who are strictly prohibited from making any refunds themselves, or any disbursements, except such as may have been sanctioned by the magistrate, or the superior authorities.

Refunds.

803. *Rule 12.* The records of such cases, as may have been finally disposed of, should be forwarded to the magistrate's office on the 1st January of each year, arranged in bundles according to the thana and the nature of the offence, and accompanied by a clearly arranged catalogue.

Records to be kept at sudder station.

804. *Rule 13.* Should the deputy magistrates, or assistants, see reason to believe that any one of their amlah, or any darogah, mohurir, or jemadar, has been guilty of misconduct, or is otherwise incapacitated, so as to render necessary his removal from office, they will report the circumstances through the magistrate to the superintendent of police, and forward the papers of the case, together with their opinion, for final orders, suspending such officer on their own responsibility, should such a measure appear advisable.(a)

Dismissal of amlah, or police darogah, mohurir, or jemadar.

805. *Rule 14.* The dismissal of burkundazes, chokeedars, and goraitis, as also the appointment of burkundazes, and the confirmation of chokeedars and goraitis nominated by the zumeendars, rests entirely with the deputy magistrates or assistants, subject, of course, to an appeal in the case of the former to the superintendent of police, and in that of the latter to the magistrate. The assistants or deputies will, however, furnish the magistrate with a monthly statement of burkundazes, chokeedars, and goraitis, dismissed by them, specifying

Dismissal and appointment of burkundazes, chokeedars, and goraitis.

Statement of such.

(a) In case of dismissal the following particulars must be forwarded to the magistrate for report to the superintendent of police in accordance with his C. O. No. 10 of 1842, viz. 1. Name of dismissed officer ; 2. Name of his father, and place of birth ; 3. Office held by him ; 4. Cause of dismissal ; 5. Description of person, noticing peculiarities of speech, form, or feature ; 6. Remarks.

in each instance the nature of the offence. Should his offence be such as to render the re-employment of any burkundaz improper, the deputies or assistants will forward the papers through the magistrate to the superintendent of police, for the necessary orders.

Statement of police officers punished.

806. *Rule 15.* A similar statement of police officers punished by fine or suspension from office will accompany the above.

Circular orders.

807. *Rule 16.* The deputy magistrates, or assistants, will be careful to issue no "dustoor-ool-umul," or circular orders of a general nature to the police, without the approval of the magistrate and the superintendent of police.

Appointment of ministerial officers, and police thanadars, mohurirs, and jemadars.

808. *Rule 17.* On a vacancy occurring in the ministerial establishment, or in any of the higher grades of the police (thanadar, mohurir, or jemadar), the deputy magistrates, or assistants, will nominate the candidate whom they may think most capable, giving the preference on all occasions to subordinates, who may in any way have distinguished themselves. They will then take the deposition of their nominee in open cutcherry, as to his residence, former employments with dates, fact of removal from any appointment with cause thereof, relationship or connection with any residents in the division, or with any of the amlah in the district offices. This statement the deputies, or assistants, will forward with their nomination in the ordinary form, for the approval of the magistrate and the superintendent of police.

REGISTERS AND BOOKS, ENGLISH AND VERNACULAR.

809. *Rule 18.* The deputies or assistants will keep in their office at all times ready for the magistrate's inspection, the following books and registers, in English and the vernacular, the headings of which are to be furnished to them from the magistrate's office.

Registers of cases pending.

¹ Appendix B,

No. 7.

² *Ibid.*, No. 12.

³ *Ibid.*, No. 11.

*Register of hajut and bail cases pending.*¹ *Register of miscellaneous and burawurda ditto.*² *Register of Act IV. of 1840 cases ditto.*³ The deputies will take care, that the cases are entered in these on the day of their institution, and they will write the decision at the time of its delivery in their own hand.

Register of fines.

⁴ Appendix B, No. 29.

*Register of fines.*⁴ This they will keep open on their table, and will enter the fines, as they pronounce the order. They will take care that all fines are paid in their own presence, and will enter the receipt at the moment under the proper heading. In forwarding to the station prisoners, who may be sentenced to imprisonment with fine in lieu of labor, or in lieu of an additional term of imprisonment, the deputies will always send with them an abstract from the fine book, in order that these fines, which will then be payable at the sudder station, may be duly entered in the books of the magistrate's office.

Books of police officers' conduct.

⁵ Appendix B,

No. 17.

⁶ *Ibid.*, No. 20.

*Book of police officers' good conduct;*⁵ *and separate book of bad conduct.*⁶ In these books the deputies will note every occasion on which a police officer may distinguish himself; and every instance in which he may be fined, suspended, or reprimanded.

Daily account current.

⁷ c. Appendix B, No. 30.

*Book of daily receipts and disbursements.*⁷ This book must never be allowed to fall into arrears, and from this will be made out the weekly cash accounts for transmission to the magistrate.

Registers of arrests.

⁸ Appendix B,

No. 2.

⁹ *Ibid.*, No. 1.

*Register of persons who have eluded the pursuit of justice;*⁸ *and register of persons who have broken jail.*⁹ These books must be carefully kept, and measures should be taken by the deputies every now and then to ascertain whether the parties have returned to their houses,

or to what part of the country they have made their escape. Notice of the escape of these parties must always be given to the magistrate of the district, in order that the names of the fugitives may be entered in the books of his office.

Also a book of calendars of commitment.

And the following books and registers in the vernacular :

VERNACULAR.

1 *Book of purwanas.*

1 *Ditto of summons and dustucks, &c.*

1 *Register of petitions.*¹

1 *Ditto of thana reports.*²

1 *Copy book of roobakarees.*

4 *Record-keeper's registers of cases according to Mr. Robinson's plan.*³

1 *Daily register of parties in attendance according to the orders of nizamat adawlut.*⁴

1 *Register of subsistence money deposited by parties to suits.*⁵

1 *Register of subsistence money paid to witnesses by government.*⁶ This money the deputies or assistants will invariably see paid in their own presence, and will send a detailed statement of sums paid to each witness, on account of government, to the magistrate monthly, i. e., on the 1st of each month, in order that it may be included in the contingent bills of the office. Occasional sums of money, not exceeding 100 rupees at a time, will be sent to the deputies by the magistrates, to enable them to make these disbursements, which, however, if the sudder court's orders for the prompt disposal of cases are properly acted up to, ought to be of rare occurrence.

*Two registers of unclaimed⁷ and lawaris property.*⁸ In these the deputies or assistants will include all property, which may be forwarded to their court, whether stolen, suspicious, unclaimed, or left by persons dying intestate. The latter kind of property will be forwarded weekly through the magistrate to the civil court.

¹ c. Appendix B, No. 4.

² *Ibid*, No. 5.

³ *Ibid*, No. 24.

⁴ *Ibid*, No. 18.

⁵ *Ibid*, No. 32.

⁶ *Ibid*, No. 31.

Registers of unclaimed and other property.

⁷ Appendix B, No. 14.

⁸ *Ibid*, No. 15.

*A register of chokeedars.*⁹ This register must be very carefully kept up—the removal of a chokeedar and the name of his successor being noted as soon after the order is given as possible. The deputies or assistants will take every opportunity also, on visiting their thanas, of assembling the chokeedars, and testing its correctness—weeding the force at the same time of all men, who may appear incapable of the active performance of their duties, and ascertaining that the whole have been regularly paid.

Register of chokeedars.

⁹ c. Appendix B, No. 19.

*Book of prisoners' rations.*¹⁰ The rations of the prisoners and persons under trial in hajut will be furnished, whenever practicable, by the jail moodee, who will keep an agent at the out-station for this purpose, and will receive payment from the magistrate's treasury on production of the deputy's vouchers, specifying the daily number of prisoners in confinement. These vouchers may be in the vernacular, but the deputies will superscribe them in their own handwriting with the number of prisoners, and will attach their initials thereto. On the 1st of each month they will forward a list in the vernacular of prisoners in confinement on each day of the month, for comparison with the vouchers.

Book of prisoners' rations.

¹⁰ c. Appendix B, No. 33.

At the same time, the deputies will furnish the magistrates with a memorandum in the vernacular, shewing the number of prisoners in confinement, or in transit, on the last day of

Memo: of present state of prisoners.

the preceding month, as also the number of escapes and deaths. These memoranda will be entered by the magistrates at the foot of their monthly statements of prisoners and casualties forwarded to government.

810. Strict attention must be paid to this last rule. When the officer in charge of a subdivision is subordinate to more than one magistrate, he is to furnish each magistrate with the memorandum required of the prisoners belonging to that jurisdiction. C. O. Govt. Bengal No. 1200, June 27, 1853.

If with special powers.

Reports and petty cases.

* See para. 775.

Heinous offences

811. *Rule 19.* Officers exercising the above powers at out-stations, will hear and pass orders on all reports from the thana under them, and dispose of all cases occurring in their jurisdiction and within their competence to decide.* All cases of a heinous nature, such as murder, dacoity, aggravated burglary, or serious affray, must be immediately reported to the magistrate; but the subordinate officers will at the same time pass such orders, as may be necessary, and proceed themselves to the scene of the crime when practicable, for the purpose of carrying on the requisite inquiries, without waiting the magistrate's instructions. On receiving these latter, they will of course be guided accordingly.

Minor offences beyond their competence.

812. *Rule 20.* The subordinate officers will proceed to take evidence in all cases of felony, or misdemeanor, which, though beyond their competence to decide, may be unattended with aggravating circumstances; such as simple theft of property exceeding 50 rupees in value, simple burglary, and the like. Where the subordinate officers may consider the charge not proved, they will dismiss the parties, with the exception of defendants, whom they will retain on bail, until the receipt of the magistrate's orders for the discharge of the defendants, or for their transmission to be tried before him. Where the subordinate officers may consider the charges proved, they will at once forward the prisoner, together with the papers, to their superiors. The latter arrangement will also apply to prisoners triable under Act III. of 1844, who can only be sentenced to suffer corporal punishment by an officer exercising the powers of a magistrate.(a)

SECTION XV.

OF THE FUNCTIONS OF THE LAW OFFICER AND NATIVE JUDGES.

Magistrate may refer certain cases;

813. The magistrates are authorized to refer for trial to the Hindoo and Mahomedan law officers, all complaints or charges brought before them for petty offences, such as abusive language, calumny, inconsiderable assaults or affrays, and all charges of petty thefts, when unattended with any aggravating circumstances. Reg. III. 1821, sect. 3, cl. 1.

the same which they can refer to assistants.

814. Magistrates are competent to refer to the law officers any criminal cases, which they are authorized by former regulations to refer to their assistants; and in the mode of making the reference, and in the subsequent stages of the proceeding, the magistrates and

(a) These rules have been issued by the government of Bengal, and of course apply to assistants and deputies only in the lower provinces.

law officers are to be guided by the provisions hitherto in force relative to such cases. Reg. III. 1821, sect. 3, cl. 2.

815. The law officers, in the decision of criminal cases so referred to them, are authorized to exercise the same powers as those vested in the assistants to the magistrates by sect. 20, Reg. IX. 1807, and by the other regulations therein referred to; that is, they are not to sentence a person convicted of abusive language, or calumny, or inconsiderable assault or affray, to a more severe sentence than 15 days' imprisonment, and a fine of 50 rupees with an eventual commutation, if the fine be not paid, to further confinement for 15 days more, making the entire term of imprisonment, if the fine be not paid, one month of 30 days. Nor are they to sentence a person convicted of petty theft to a more severe sentence than [corporal punishment* and] imprisonment for a period of one month. Persons sentenced to imprisonment by the law officers are not to be confined in irons or in fetters, except in cases in which the misconduct of such individual, during his imprisonment, appears to the magistrate to render such measure necessary for his safe custody. Reg. III. 1821, sect. 3, cl. 3.

Powers in trivial cases,

and in cases of petty theft

* See section of corporal punishment.

May not impose fetters;

816. In all cases of petty theft referred for trial to law officers, sudder ameens, and principal sudder ameens, it is competent to those officers to sentence persons convicted before them of that offence to labor in addition to the [corporal punishment* and] temporary imprisonment which they are authorized to adjudge. Reg. II. 1832, sect. 3.

but may sentence to labor in cases of theft.

* See section of corporal punishment.

817. The law officers are to forward to the magistrates, on the fifth day of each month, a statement showing the manner in which the cases referred to them may have been disposed of, in order that the same, after having been carefully inspected by the magistrates, with the view of noticing and eventually correcting any irregularities, may be incorporated in the periodical reports required to be submitted to the superior courts. Reg. III. 1821, sect. 3, cl. 4.

Monthly statements.

818. The foregoing provisions are applicable to sudder ameens.(a) Reg. III. 1821, sect. 4.

Sudder ameens.

819. The above rules are applicable to principal sudder ameens; and it is competent to the magistrate to refer to a sudder ameen, or principal sudder ameen, not being a Mahomedan law officer, any criminal case for investigation, though such case is not finally cognizable by such sudder ameen; provided however that no commitment be made by those officers, and that their power of awarding punishment in criminal matters, under the existing regulation, be not exceeded. Reg. V. 1831, sect. 18, cl. 6.

And principal sudder ameens.

Cases may be referred to them for report;

820. The above provision in no way affects the rules of Reg. III. 1821. The Mahomedan law officer has still the power of trying cases finally cognizable by him, which may be referred to him. C. O. No. 133 of vol. 2.

but not to a law officer, who can only try cases finally cognizable by himself;

821. The powers of the law officers are confined to the trial and decision of trivial cases; and cannot be construed as conveying to them authority to investigate and report upon any description of cases which they are not ultimately competent to decide. Should a case,

and should return more serious cases

(a) The application of these provisions is restricted in the text to sudder ameens vested with certain special powers under sect. 5, Reg. II. 1821; but all sudder ameens have now greater powers than those specified.

apparently trivial, turn out upon investigation to be of a serious nature, it would be necessary for the law officer, to whom it had been sent for trial and decision, to return it to the magistrate, unaccompanied however by any opinion as to the merits of the case. C. O. No. 30 of vol. 2; and Const. No. 516.

Cases which may ultimately be brought before the sessions should not be referred to law officer.

822. An injudicious employment of the Mahomedan law officers in trying criminal cases may involve the anomaly of the same individual being required to sit as an assessor in cases, in which he has already conducted the primary inquiry, and has consequently prejudged the subject to be decided. To avoid such incongruity a magistrate should make over to those officers such cases only, as may, on a cursory examination, appear to him not likely to be ultimately referred to the sessions court. C. O. No. 236 of vol. 2. *L. P.*

823. Where the evidence, on which the commitment was made, had been taken before the law officer, the court held that he should not have sat at the trial. Reports *L. P.* 1851, page 803.

Cases under Reg. VII, 1819 may be referred.

824. All cases under the provisions of Reg. VII. 1819, are referrible to principal sudder ameens for investigation and report. Const. No. 1265.

How such officers are to issue orders to police;

825. In cases referred for investigation and decision to sudder ameens by the magistrate, they have no authority to issue purwanas to thanadars, darogahs, or other mofussil police officers; when necessity exists they are to represent the matter to the magistrate who will issue the necessary orders. Const. No. 451.

and processes.

826. The processes of sudder ameens, in criminal cases referred to them, should be issued under their own signatures, but under the seal and through the officers of the magistrate. Const. No. 741.

SECTION XVI.

OF MOONSIFFS INVESTED WITH CRIMINAL POWERS IN THE LOWER PROVINCES.

First grade moonsiffs were invested with the powers of an assistant; but are not to exercise them without special orders, on report.

827. On the 24th April 1854 all first grade moonsiffs were made deputy magistrates with the ordinary powers of an assistant. But it was subsequently ordered that all moonsiffs whose cutcherries were situated at a location not identical with that of a magistrate or joint magistrate, or deputy magistrate, should abstain for the present from exercising criminal powers. This order however did not affect moonsiffs who had previously exercised such powers; and the court were authorized to state that government would readily receive from the local officers any well considered suggestions, regarding the exercise of criminal powers, either by any particular moonsiff, or by moonsiffs generally in the interior. C. O. No. 6, June 9, 1854, *L. P.*

Rules to be observed.

828. The following subsidiary orders, issued in C. O. No. 4, May 19, 1854, *L. P.*, are to be observed in the employment of the first grade moonsiffs, who have been vested with powers of an assistant to the magistrate under Reg. XIII. 1797, and Reg. IX. 1807 :—

829. *Rule 1.* Those moonsiffs, who are stationed at the head quarters of a magistrate, or officer exercising the full powers of a magistrate, either at a sudder station or at a subdivision, will only take up those cases which may be made over to them for trial by such officers. They will not exercise their power of taking petitions under Act X. of 1854, except in the absence of the magistrate, or officer exercising powers of a magistrate, and under express instructions from him.

Powers at sudder station.

830. *Rule 2.* Those moonsiffs, whose cutcherries are situated at the same town or village as a police thana, will issue such orders, as may be necessary in connection with the cases under trial before them, to the local police officers, who are directed to obey them accordingly. The moonsiffs, as deputy magistrates, will be employed only in the adjudication of those petty cases, in which the police are prohibited to interfere, and it will therefore be only on rare occasions that they will be brought in contact with the police. No case of petty theft should be taken up by the moonsiff, except under express directions from the magistrate passed by that functionary on the report of the police officer. The moonsiffs will return to the petitioners any petitions involving charges of a more grave character than those which they are competent to adjudicate.

Powers when stationed at the same place as a thana.

831. *Rule 3.* The moonsiffs, whose cutcherries are situated at the same town or village as a police thana, will make use of the thana lock-up room for the custody of those defendants under trial before them, who may be unable to furnish bail, or who may be charged with an offence not bailable. If a defendant, on conviction, is sentenced to imprisonment, either as the direct punishment of his offence or in commutation for a fine which he is unable to pay, he must be immediately forwarded to the nearest jail to undergo his sentence; but it is expected that the moonsiffs will, as much as possible, restrict their sentences to fines proportioned to the means of the defendants in the very trifling cases that will come before them.

In such case may use thana as a lock-up; but convicted prisoners must be sent to jail.

832. *Rule 4.* Those moonsiffs, whose cutcherries are situated at a location not identical with a police thana, will, for the present, abstain from the exercise of their criminal powers, until the judge and magistrate, in consultation, can report to the court whether it is desirable that the moonsiff's cutcherry should be removed to the site of the thana, or *vice versa*.

If not at location of thana, not to act.

833. *Rule 5.* The moonsiffs will employ their own amlah, nazir, and peons, in the conduct of the criminal cases before them. Their processes will issue under their signature and the seal used by them in the civil department.

To use civil court amlah.

834. *Rule 6.* They will be furnished with registers, printed forms, witness-attendance books, and stationery, from the magistrate's office.

Magistrate to supply stationery.

835. *Rule 7.* They will submit their monthly statements direct to the magistrate of the district, forwarding at the same time the nuthces of cases which have been decided during the month;—or, where they are subject to the jurisdiction of two different magistrates, they will submit separate statements, &c., according to each jurisdiction.

Monthly statements.

836. *Rule 8.* Moonsiffs, empowered to receive petitions of plaint, will, by the examination of the petitioner, endeavour to ascertain whether there is a *prima facie* case made out

Mode of procedure.

against the party or parties charged ; he will then examine the witnesses named by the prosecutor, with the view to satisfy himself that the defendants should be summoned, and after hearing all that is urged by them and their witnesses, will dispose of the case.

If session case,
to forward record
at once.

837. *Rule 9.* In the course of an inquiry, should it appear that the result would probably involve a degree of punishment beyond that which the moonsiff is empowered to inflict, he will at once forward the whole record to the magistrate.

If case connect-
ed with others, to
report.

838. *Rule 10.* The moonsiffs are enjoined to be careful in inquiring whether the petty cases before them are in any way connected with other similar, or more serious charges, pending trial before any other criminal authority in the district. If such should be the fact, they will immediately suspend their own proceedings, and refer to the magistrate for his orders.

Not to exercise
police powers, but
to report irregulari-
ties.

839. *Rule 11.* The moonsiffs, though superior, as deputy magistrates, to the darogahs and all other police officers, are not to exercise any police powers, or to quit their cutcherries for the purpose of any local inquiry, or for the prevention of affrays or other crimes. They are expected to act in friendly communication with the police officers, but it will be their duty, in case of any gross neglect of duty or abuse of power on the part of the police, to report the circumstance to the magistrate for such orders as he may think requisite. They are strictly prohibited from imposing fines on any police officers or village chokeedars, except on charges under trial judicially before them.

Civil duties most
important.

840. *Rule 12.* The moonsiffs are cautioned that they are to consider their civil duties as their first and most important duty. It will not be accepted as a valid excuse for a deficient out-turn of civil work, that the moonsiff was engaged in criminal duties. If the number of criminal cases before a moonsiff is so large as to interfere with the discharge of his civil duties, he should at once report the circumstance to the magistrate, notifying the cases of which it is most expedient to relieve him.

If civil duties too
heavy, will be re-
lieved of criminal.

841. *Rule 13.* The court, on the representation of the judge, will at all times be prepared to recommend to government to suspend the exercise of criminal powers by a moonsiff, whose civil duties are sufficient to occupy the whole of his time. C. O. No. 4, May 19, 1854. *L. P.*

SECTION XVII.

OF THE FUNCTIONS OF THE CANTONMENT JOINT MAGISTRATE, AND POLICE IN CANTONMENTS.

842. The folloing rules are in force for the guidance of joint magistrates in charge of sudder bazars and police in military cantonments.

Division into
chokees.

843. *Rule 1.* The cantonment will be divided into police divisions, and the head-quarters of each chokee will be established in a central and public situation. To each chokee a jemadar will be appointed, and all the chokeedars within the boundaries of the chokee will make their reports to him, and consider themselves under his orders.

Jemadar.

844. *Rule 2.* These arrangements, when completed, should be published in station orders for general information.

845. *Rule 3.* On the 1st May of each year, the cantonment joint magistrate will furnish the superintendent with a nominal roll of all the establishments subordinate to him, arranged by chokees, and at the same time supply a detailed statement of his office establishment for the information of the civil auditor.

Annual nominal roll of establishments.

846. *Rule 4.* The cantonment joint magistrate, on the 1st April in each year, will appoint five respectable and substantial householders as a panchayat for the whole cantonment, whose duty it will be to fix the rates of assessment to be levied from the native inhabitants of the several bazars, as well as from such persons as may occupy detached houses or buildings.

Panchayat to be appointed annually for assessment.

847. *Rule 5.* The panchayat will receive a sunnud of appointment under the signature of the joint magistrate, and will proceed under his orders to effect the annual assessment.

Sunnud for panchayat.

848. *Rule 6.* On receipt of the assessment roll, which will contain the names, caste, and profession of the inhabitants, and the amount of tax to be paid monthly by each, the cantonment joint magistrate will amend and adjust the rates of assessment as may appear just and proper, after duly considering any complaints respecting alleged unfairness of assessment, or excuses on the ground of inability to pay the amount assessed. Complaints of this nature will be received on unstamped paper.

Adjustment of rates.

849. *Rule 7.* When the rates of assessment have been finally adjusted, a fair copy of the assessment roll, written in Oordoo, shall be affixed at the most conspicuous and frequented places in the several divisions; a second copy will be similarly fixed at the police chokee; and the third, with an English copy, will be deposited in the cantonment joint magistrate's office, regularly paged; all being duly signed by the cantonment joint magistrate.

Assessment roll to be published.

850. *Rule 8.* The assessment will be regulated under the sanction of the superintendent of cantonment police with reference to the expenses of the police, and of the cleansing and repairing of roads, drains, bridges, &c., belonging to the several bazars inhabited by the parties assessed. The total sum is not to exceed the average rate of two annas per mensem from each proprietor or principal occupier of a shop or habitation.

Rules for regulating ditto.

851. *Rule 9.* For the purpose of realizing the amount of the assessments, and for the payment of the police, a respectable and intelligent native, who shall furnish security for rupees 1000, is to be selected and appointed by the cantonment joint magistrate, with the sanction of the superintendent. He will be called the sudder bukhshce, and will receive from the collections such fixed monthly salary, and allowance for stationery, &c., as may hereafter be determined by the superintendent.

Sudder bukhshce.

852. *Rule 10.* On the 1st of each month the bukhshce will collect his quota from each assessed individual, and will sign the receipt presented by him; or, if the party is unable to write, the bukhshce will himself grant the receipt.

To collect from 1st of month.

853. *Rule 11.* On the last day of the month, he will furnish a list of defaulters to the cantonment joint magistrate, who will issue, upon its reverse side, a summons, with specifica-

Defaulters.

Amount may
be recovered by
distress.

tion of the defaulters' names, requiring their appearance at his office. He will then examine into the merits of each case; and, in the event of its appearing that any arrears are due, will issue a written order to the bukshee, to levy the same by process of distress, and public sale of such portion of the personal property (except working tools and implements of husbandry) as may suffice to make good the amount due: any overplus will be restored to the party.

Complaints against
bukhshee.

854. *Rule 12.* All complaints against the bukshee for undue exaction, will be immediately enquired into by the cantonment joint magistrate.

Special rates.

855. *Rule 13.* In consequence of the increased protection afforded under these arrangements, the undermentioned special rates of chokeedaree tax are to be collected:

First. Merchants, superior shopkeepers, and extensive traders, at rupees 2 per mensem.

Second. Other householders occupying bungalows or large houses at rupees 2 per mensem and under, according to their circumstances, or the extent and description of the premises they occupy, at the discretion of the cantonment joint magistrate.

Third. Officers of Her Majesty's and the Hon'ble Company's army to be exempted.

Fourth. Military pensioners who do not carry on any trade to be also exempted.

Fifth. Pensioners, who carry on trade, will be rated at a tax not exceeding rupees 2 per mensem.

Sixth. Defaulters will be dealt with by the cantonment joint magistrate under rule 11.

Appeal from as-
sessment.

856. *Rule 14.* Parties dissatisfied may appeal to the commanding officer of the station; who will exercise, in such special cases, the same powers as are conveyed to the cantonment joint magistrate in rule 11. Such parties will be given to understand, that their residence in cantonments is conditional on their conforming to the rules in force.

Parades let out
for grazing.

857. *Rule 15.* Where it is deemed expedient, an income may be derived by farming the grazing of the several parades and practice grounds, under the orders of the commanding officer. The collections may in such cases be disbursed by the cantonment joint magistrate.

Monthly cash ac-
count.

858. *Rule 16.* The cantonment joint magistrate will transmit to the superintendent's office monthly cash accounts, (a) which are to include on one side all receipts under the dif-

(a) *Monthly Cash Account of Bazar Fund of the Cantonment Joint Magistrate's Office, Meerut, for the month of July 1851.*

CR.						DR.
185						
1st, ...	To cash balance in hand of the bukshee, ...	0 0 0	1165 11 0	By FINES, AS CANTONMENT JOINT MAGISTRATE.		
	To FINES, AS CANTONMENT JOINT MAGISTRATE.			By amount forwarded to the Zillah Magistrate,	102 0 0	102 0 0
4th, ...	Imam chokeedar, No 2 chokee, for neglect of duty, fined, ...	2 0 0		By PAY OF CHOKEEDAREE ESTABLISHMENT, JULY 1851.		
12th, ...	Muthoo, Sookah, Dhunoo, Teeka, Kunhai, and Rohim, for creating a disturbance, fined, ...	100 0 0	102 0 0	No. 1—CHOKEE.		
	To FINES, AS IN CHARGE OF SUDDER BAZAR.			1 Jemadar, ...	16 0 0	
14th, ...	To Shewdial, for writing false petition, fined, ...	0 14 6		1 Naib Jemadar, ...	6 0 0	
23rd, ...	To Juggoo, sals, for disobedience of orders, fined, ...	2 0 0		1 Mohurir, ...	5 0 0	
	To Shadoo, mehtur, for disobedience of orders, fined, ...	2 0 0	4 14 6	1 Duffadar, ...	5 0 0	
	ARREARS.			24 Chokeedars, @ 4 Rs. each, ...	96 0 0	
	To chokeedaree collections for June 1851, ...	1450 4 6	1450 4 6	No. 2—CHOKEE.		
	To chokeedaree collections for July 1851, ...	1452 14 3	1452 14 3	1 Jemadar, ...	16 0 0	128 0 0
	Carried forward, Co.'s Rs., ...		4175 12 3	1 Naib Bukhshee, ...	8 0 0	
				1 Mohurir, ...	5 0 0	
				2 Naib Jemadars, @ 8 Rs. each, ...	16 0 0	
				2 Ditto ditto, @ 6 Rs. each, ...	12 0 0	
				2 Duffadars, @ 6 Rs. each, ...	12 0 0	
				2 Ditto, @ 5 Rs. each, ...	10 0 0	
				87 Chokeedars, @ 4 Rs. each, ...	148 0 0	227 0 0
				Carried forward, Co.'s Rs., ...		457 0 0

ferent heads of income, viz. chokeedaree tax, fines, or other customary income for the month; and on the other side, disbursement, detailed under the head outlay, viz. pay of establishment, the rates of pay of the several classes being detailed; the subsistence of prisoners, the number of men and days and the rate being stated; expense of the funeral or removal of paupers to be stated separately; next the contingent bills, according to numbers; remittances to the collector's office: and lastly, the balance in cash, and inefficient balance; this last showing every item in detail.

859. *Rule 17.* The cantonment joint magistrate will transmit to the superintendent Annual cash account.

Monthly Cash Account of Bazar Fund of the Cantonment Joint Magistrate's Office, Meerut, for the month of July 1851.

Ca.			Dr.		
Brought forward, Co.'s Rs.,....	..	4175 12 3	Brought forward, Co.'s Rs.,....	..	457 0 0
			BY PAY OF CHOKEEDAREE ESTABLISHMENT.— (Continued.) No. 3—CHOKEE.		
			1 Jemadar,	16 0 0	
			1 Naib Jemadar,	6 0 0	
			1 Mohurir,	5 0 0	
			5 Duffadars, @ 5 Rs. each,	25 0 0	
			30 Chokeedars, @ 4 Rs. each,	120 0 0	172 0 0
			SUDDER BAZAR ESTABLISHMENT.		
			1 Officer in charge,	32 0 0	
			1 Officiating ditto,	32 0 0	
			1 English Writer,	25 0 0	
			1 Kotwal,	40 0 0	
			1 Choudhuree,	10 0 0	
			1 Mutasuddi,	7 0 0	
			1 Jemadar Peon,	8 0 0	
			1 Naib Jemadar Peon,	5 0 0	
			8 Peons, @ 4 Rs. each,	32 0 0	
			3 Weighmen, @ 3 Rs. each,	9 0 0	300 0 0
			No. 4—CHOKEE.		
			1 Bukhshee,	30 0 0	
			1 Jemadar,	8 0 0	
			5 Duffadars, @ Rs. 5-8 each,	27 8 0	
			1 Duffadar,	5 0 0	
			74 Chokeedars, @ 4 Rs. each,	296 0 0	306 8 0
			No. 5—CHOKEE.		
			1 Jemadar,	16 0 0	
			1 Choudhuree, for supplying Chokeedars,	10 0 0	
			1 Mohurir,	5 0 0	
			1 Naib Jemadar,	6 0 0	
			1 Duffadar,	5 8 0	
			22 Chokeedars, @ 4 Rs. each,	88 0 0	130 8 0
			No. 6—CHOKEE.		
			1 Duffadar,	6 0 0	
			9 Chokeedars, @ 4 Rs. each,	36 0 0	42 0 0
			No. 7—CHOKEE.		
			1 Duffadar,	5 0 0	
			4 Chokeedars, @ 4 Rs. each,	16 0 0	21 0 0
			CONTINGENT CHARGES.		
			By Contingent Charges as per Bill No. 3, for July 1851, .....	..	84 0 0
			IN DEPOSIT IN THE COLLECTOR'S TREASURY.		
			By amount deposited in the Collector's Treasury, as per his receipt, .....	..	1770 7 6
			Total, Co.'s Rs. .....	..	3343 7 6
			By cash balance in hand of the Bukhshee, August 1st, 1851, .....	..	832 4 9
Grand Total, Co.'s Rs. ..	..	4175 12 3	Grand Total, Co.'s Rs. ..	..	4175 12 3

In deposit in the Collector's Treasury, Co.'s Rs. 14189-11-0.

E. E.

Meerut Cantonment Joint Magistrate's Office,
The 185 . }

A. B.,
Cantonment Joint Magistrate.

on the 1st May, in duplicate, an annual cash account,(a) for the information of government.

Sanction for dis- 860. Rule 18. No disbursement, except for oil, stationery, subsistence of prisoners, bursements. and burial of paupers, to be made, without previous sanction; all others, including contingent

(a) Annual Cash Account of Bazar Fund of the Cantonment Joint Magistrate's Office, Meerut, from May 1, 1850 to April 30, 1851.
Cr.

1850. May 1st,	To Cash Balance on the 1st May 1850, ..	0 0 0	1268 12 9	By FINES AS CANTONMENT JOINT MAGISTRATE FORWARDED TO THE ZILLAH MAGISTRATE.			
	TO CHOKEFDAREE COLLECTIONS.			By May 1850, ..	24 0 0		
	To March 1850, ..	1415 15 0		" June ..	64 0 0		
	" April ..	1444 0 6		" July ..	22 6 0		
	" May ..	1419 12 3		" August ..	68 0 0		
	" June ..	1446 8 6		" September ..	30 0 0		
	" July ..	1421 1 3		" October ..	4 0 0		
	" August ..	1441 1 6		&c.		312 6 0	
	" September ..	0 0 0		By UNCLAIMED PROPERTY.			
	" October ..	0 0 0	8598 7 0	By May 1850, ..	0 10 4		
	&c.			" June ..	0 11 9		
	TO FINES AS CANTONMENT JOINT MAGISTRATE.			" July ..	0 0 0		
	To May 1850, ..	24 0 0		" August ..	2 9 9		
	" June ..	64 0 0		" September ..	0 0 0		
	" July ..	22 6 0		" October ..	5 3 6	9 3 4	
	" August ..	68 0 0		&c.			
	" September ..	30 0 0		By FINE OF CHOKEFDAREE ESTABLISHMENT MARCH 1850.			221 9 4
	" October ..	4 0 0	212 6 0	No. 1—CHOKKEE.			
	&c.			1 Jemadar, ..	16 0 0		
	TO UNCLAIMED PROPERTY.			1 Naib Jemadar, ..	6 0 0		
	To May 1850, ..	0 10 4		1 Mohurir, ..	5 0 0		
	" June ..	0 11 9		1 Duffadar, ..	5 0 0		
	" July ..	0 0 0		23 Chokeedars @ 4 Rs. each, ..	92 0 0		
	" August ..	2 9 9		1 Ditto, ..	3 10 0		
	" September ..	0 0 0				127 10 0	
	" October ..	5 3 6	9 3 4	Ditto for 5 months, ..		638 2 0	
	&c.			No. 2—CHOKKEE.			
	TO FINES AS IN CHARGE OF SIDDER BAZAR.			1 Jemadar, ..	16 0 0		
	To May 1850, ..	0 0 0		1 Naib Bukhshee, ..	8 0 0		
	" June ..	4 0 0		1 Mohurir, ..	5 0 0		
	" July ..	0 0 0		3 Naib Jemadars, @ 8 Rs. each, ..	24 0 0		
	" August ..	0 0 0		1 Ditto, ..	6 0 0		
	" September ..	2 0 0		3 Duffadars, @ 6 Rs. each, ..	18 0 0		
	" October ..	0 0 0	6 0 0	1 Ditto, ..	5 0 0		
	&c.			36 Chokeedars, @ 4 Rs. each, ..	144 0 0		
	TO AMOUNT WITHDRAWN FROM THE COLLECTOR OF MEERUT.			1 Ditto, ..	3 1 0		
	To May 1850, ..	0 0 0		1 Ditto, ..	0 15 0		
	" June ..	0 0 0				230 0 0	
	" July ..	1528 2 0		Ditto, for 5 months, ..		1150 0 0	
	" August ..	0 0 0		No. 3—CHOKKEE			
	" September ..	0 0 0		1 Jemadar, ..	16 0 0		
	" October ..	0 0 0	1528 2 0	1 Naib Jemadar, ..	6 0 0		
	&c.			1 Mohurir, ..	5 0 0		
				6 Duffadars, @ 5 Rs. each, ..	25 0 0		
				28 Chokeedars, @ 4 Rs. each, ..	112 0 0		
				1 Ditto, ..	0 6 0		
				1 Ditto, ..	0 12 0		
				1 Ditto, ..	3 10 0		
				1 Ditto, ..	3 4 0		
				Ditto, for 5 months, ..		173 0 0	
						860 0 0	
				SIDDER BAZAR ESTABLISHMENT, AND			
				No. 4—CHOKKEE.			
				1 Bukhshee, ..	30 0 0		
				1 Jemadar, ..	8 0 0		
				6 Duffadars @ 5-8 Rs. each, ..	33 0 0		
				74 Chokeedars, @ 4 Rs. each, ..	296 0 0		
				Ditto, for 5 months, ..		367 0 0	
				1 Officer in charge, ..	32 0 0	1835 0 0	
				1 Officiating ditto, ..	32 0 0		
				1 English Writer, ..	25 0 0		
				1 Kotwal, ..	40 0 0		
				1 Choudhuree, ..	10 0 0		
				1 Mutasuddi, ..	7 0 0		
				1 Jemadar, ..	8 0 0		
				Carried forward Co.'s Rs., ..	154 0 0	5361 10 0	221 9 4

charges under Rs. 100, to be forwarded, in duplicate, for the superintendent's sanction and countersignature, with a letter of explanation: if above Rs. 100, the sanction of government will be required: and in case of repairs, or improvements, estimates must be furnished.

861. *Rule 19.* All fines realized under the powers conveyed by rule 61 should be carried to the general fund; all those under the powers of the cantonment joint magistrate, should be sent to the magistrate of the zillah, for incorporation into his accounts, after the period for appeal has expired.

Fines how to be disposed of.

Annual Cash Account of Bazar Fund of the Cantonment Joint Magistrate's Office, Meerut, from May 1, 1850 to April 30, 1851.

Ca.

Dr.

Brought forward Co's Rs.	....	....	11610 15 1	Brought forward Co's Rs	154 0 0	5381 10 0	221 9 4
				SUDDER BAZAR ESTABLISHMENT, AND No. 4—CHOKEE—(Contd.)			
				1 Duffadar, ..	5 0 0		
				8 Chuprasis, @ 4 Rs. each, ..	32 0 0		
				3 Weighmen, at 3 Rs. each, ..	9 0 0	900 0 0	
				No. 5—CHOKEE.			
				1 Jemadar, ..	16 0 0		
				1 Choudhuree for supplying Chokeedars, ..	10 0 0		
				1 Mohurir, ..	5 0 0		
				1 Nash Jemadar, ..	6 0 0		
				1 Duffadar, ..	5 8 0		
				22 Chokeedars, at 4 Rs. each, ..	88 0 0	130 8 0	
				Ditto, for 5 months, ..	....	652 8 0	
				No. 6—CHOKEL.			
				1 Duffadar, ..	5 0 0		
				9 Chokeedars, at 4 Rs. each, ..	36 0 0	41 0 0	
				Ditto, for 5 months, ..	....	205 0 0	
				DETACHMENT No. 2 CHOKEE ON THE B. GROUND.			
				1 Duffadar, ..	6 0 0		
				4 Chokeedars, at 4 Rs each, ..	16 0 0	23 0 0	
				Ditto, for 5 months, ..	....	110 0 0	6742 10 0
				CONTINGENT CHARGES.			
				By March 1850, ..	....	27 10 0	
				" April ..	....	20 0 0	
				" May ..	....	20 0 0	
				" June ..	....	20 0 0	
				" July ..	....	21 5 0	
				" August ..	....	92 4 0	
				" September ..	....	0 0 0	
				" October ..	....	0 0 0	271 3 0
				&c.			
				IN DEPOSIT IN THE COLLECTOR'S TREASURY.			
				By May 1850, ..	....	0 0 0	
				" June ..	....	1266 10 9	
				" July ..	....	0 0 0	
				" August ..	....	0 0 0	
				" September ..	....	631 11 6	
				" October ..	....	645 4 9	2543 13 0
				&c.			
				By amount paid in full to Mr. James Smith for the 2 roads of the Sudder Bazar as per his receipt enclosed, ..	....	....	1528 2 0
				Total, Co's Rs. ..	....	....	11307 5 4
				By Cash Balance in hand April 30, 1851, ..	....	....	303 9 9
Grand Total, Co's Rs.	....	....	11610 15 1	Grand Total, Co's Rs.	....	....	11610 15 1

In deposit in the Collector's Treasury, Co's Rs. 13,419-3-6.

Intestate and un-
claimed property.

862. *Rule 20.* Estates of persons dying without heirs, and unclaimed property, must not be included in the general fund as available for local expenditure ; but kept under a distinct head ; and in the event of no claimant appearing within six months, the cantonment joint magistrate will make such property over to the magistrate of the zillah, to be dealt with according to law. Lists of unclaimed property to accompany the monthly and annual accounts.

863. *Rule 21.* In the event of a claim appearing within six months for the restoration of any intestate property, the application should be submitted to the superintendent, with a statement of the grounds on which such claim is founded, the amount, and the circumstances under which the estate or property was taken possession of.

Money to be re-
mitted to collector-
ate.

864. *Rule 22.* All receipts in excess of a sum equal to one month's pay of the establishment, must be forwarded as a deposit to the collector's treasury ; and a memo : of the increase or decrease of the amount so at credit, is to be appended to the monthly and annual cash accounts.

Duplicate receipt
to be sent with an-
nual cash account ;
copies of contingent
bills, &c.

865. *Rule 23.* Duplicate receipts for amount of fines, remitted to the magistrate of the zillah, should accompany the annual cash account. *Rule 24.* With the annual accounts must be submitted a copy of the contingent bills sanctioned by the superintendent ; the receipts for all transfers of cash, or other disbursements ; and copies of the letters sanctioning disbursements.

Police force.

866. *Rule 25.* The police will not be considered as belonging exclusively to any distinct chokce, but their services will be available whenever required, for any part of the cantonment.

Chokeedars to be
inspected.

867. *Rule 26.* Every chokeedar will be examined before appointment, and duly enrolled. They will be regularly inspected and paid every month, at the cantonment joint magistrate's office.

Promotion.

868. *Rule 27.* The chokeedars will be eligible for promotion, on approved service and due qualification, without reference to the chokce to which they are attached.

Jemadar respon-
sible.

869. *Rule 28.* The jemadar of each chokce will be held responsible for the protection of the whole of his chokce. He should take measures to prevent the harboring of people of notoriously bad character, or without ostensible means of subsistence. For this purpose, the jemadar will examine daily all empty bungalows and out-houses, and will require the duffadar and chokeedar to report when any such persons locate themselves in their jurisdiction.

Empty bunga-
lows, &c.

Theft during
night.

870. *Rule 29.* In cases of theft during the night, the jemadars will give an account of their proceedings in the roznamcha, specifying the rounds they went, the officers who accompanied them, and the chokeedar in whose beat the robbery occurred. The complainant should attend upon the cantonment joint magistrate. Any one of the police, from the jemadar downwards, found guilty of neglect, or connivance, will be immediately suspended ; and the circumstance reported to the superintendent, for further orders.

Neglect or con-
nivance.

Jemadar to at-
tend.

871. *Rule 30.* The jemadars of chokces will attend daily on the cantonment joint magistrate, to make their reports, and to answer all inquiries when the roznamcha is being

read. If the cases be of importance, the questions and answers should be recorded in the margin, together with any orders issued at the time.

872. *Rule 31.* The roznamcha will be kept with minute care, every police occurrence during the preceding 24 hours being inserted in it. It will be regarded as the record and test of the efficiency and the regularity of the police in the discharge of their duties. *Rule 32.* Each roznamcha will be signed by the cantonment joint magistrate, and carefully filed in his office. Roznamcha.

873. *Rule 33.* On the occurrence of a theft, it will be immediately made known by special messengers to the adjoining chokees, and the information thus spread into the district. This order will be carefully enforced, and thus intimations of robberies will be communicated with the least possible delay. Intimation of theft to adjoining chokees.

874. *Rule 34.* One chokeedar of each chokee will make a round early every morning, to ascertain if any robbery has taken place during the night; should any have occurred, he will make an immediate verbal report to the cantonment joint magistrate at his residence, in order that he may proceed to the spot to make inquiries. Thefts during night to be ascertained.

875. *Rule 35.* Residents and others should be encouraged to apply for chokeedars to the cantonment joint magistrate. Residents to apply for chokeedars.

876. *Rule 36.* When the chokeedars come on duty at night, they should see that the padlocks on all godowns, shops, &c., are properly secured, and take notice that untenanted houses are not improperly occupied. Chokeedars to see that shops, &c. are fastened;

877. *Rule 37.* Chokeedars should be stationed morning and evening at each of the great thoroughfares and cross-roads of the bazar. They will be subjected to dismissal, if found exacting or receiving any fees or perquisites from traders or hawkers, or from any party whatever. This rule extends to all fees or collections for naches at festivals, or any other plea whatever. No fee or tax is to be levied from prostitutes, who are on no account to be molested. to be stationed in chief thoroughfares; not to exact fees.

878. *Rule 38.* Any parties having in their possession goods or property, which the police have good reason to suspect as stolen, should be taken to the chokee for investigation. Persons suspected of theft.

879. *Rule 39.* Upon the occurrence of any disturbance, the chokeedars will first endeavour to put a stop to it; and, if not able, they will take the offenders into custody. Disturbance.

880. *Rule 40.* The chokeedars and other police establishments will be held responsible, that no gaming house, or unlicensed shop for the sale of liquor or drugs, exists in their particular beat or chokee. They will be careful to report the death of travellers, and persons dying without heirs, that their property may be duly taken care of; but the enquiry and report in such cases will be made by the jemadar only. Gaming houses. Unlicensed liquor shops. Death of travellers &c.

881. *Rule 41.* On the occurrence of a robbery to which no clue is found, suspicious places, houses of ill fame, &c., should be searched, in the presence of respectable witnesses (bunyas if obtainable). This will, however, not be done without a parwanah, issued after depositions, or on reasonable grounds of suspicion. This duty shall not be entrusted to any If no clue to robbery.

chokeedar, but shall invariably be performed by the jemadar, or, in his absence, by the duffadar.

Cleanliness of bazar.

882. *Rule 42.* Should any one disregard the regulations for the preservation of good order and cleanliness of the bazar, his name should be taken by the jemadar for the purpose of his being summoned to answer for the offence.

Discharge of police officer.

883. *Rule 43.* No officer of the police force is to be discharged without the previous sanction of the superintendent, except on conviction in a criminal proceeding, a copy of which will be submitted for the superintendent's approval. They may be suspended, and the circumstance reported for further orders.

Appointments to be reported.

884. *Rule 44.* All promotions and appointments above rupees 4 will be made by the superintendent of police, or under his orders. Leave of absence exceeding one month will be subject to the same rule.

Alarm of fire.

885. *Rule 45.* Whenever an alarm of fire is given, a few chokeedars from each chokee should be immediately sent to give assistance in suppressing the flames and saving the property.

Discharged police officer.

886. *Rule 46.* No discharged police officer should be allowed to remain in, or to visit, any chokee.

Police officers not to loiter in the office.

887. *Rule 47.* As soon as a case is concluded, the police officers concerned will immediately return to their chokee, and not remain loitering about the office.

Opinion of judge regarding dismissal of police.

888. *Rule 48.* All suggestions from the session judge, as to the dismissal or suspension of any police officer, arising from proceedings on trial held before him, are to be immediately attended to.

Fire-works.

889. *Rule 49.* All fire-works on the public roads are strictly prohibited.

Accidents.

890. *Rule 50.* In cases of accident, the police will endeavor to ascertain the name of the parties, and to take them into custody, if necessary.

Police not to give cause of offence.

891. *Rule 51.* The officers of the police will be particularly careful not to give any cause of offence, but to perform their duty with all possible moderation and forbearance.

Undue violence to be punished.

892. *Rule 52.* When it is necessary to take any person into custody, the police will be careful not to use more force than is absolutely required, and to disregard any intemperance and abuse. Any undue violence or abuse on the part of the police will be severely punished.

Recovered stolen property.

893. *Rule 53.* Recovered stolen property is, if possible, to be produced in the joint magistrate's office by the party before whom it was discovered. The previous transfer of such property from one hand to another is forbidden.

Stocks.

894. *Rule 54.* Prisoners will not be placed in the stocks, except during the night time; and then only in cases of felony, or of previous escape from custody, or when the notoriety of the prisoner's character, or his behaviour, may render that course necessary.

Vehicles passing.

895. *Rule 55.* Carriages, buggies, kranchies, and hackeries will keep to the left hand side of the road. When passing another vehicle, the driver must pass to the right of it, and

then only when the road affords sufficient room. The police will give the greatest publicity to this rule, by warning all owners, and drivers, in their respective divisions.

896. *Rule 56.* The whole body of the police must bear in mind, that they are the servants and not the masters of the public; that they are embodied for the protection of the well-behaved and orderly part of the community; and that exertion to repress the misconduct of the disorderly and dishonest is what is required of them. Oppression and violence on their part will be severely noticed, when exercised against unoffending individuals.

Oppression and violence on the part of police.

897. *Rule 57.* In addition to the special establishments for the regulation of the abkaree, the police force will also be answerable for the improper admission and sale of unlicensed liquor in their jurisdiction; and the jemadars and chokeedars will be held responsible if any clandestine sale takes place in their respective divisions, or wards.

Abkaree rules.

898. *Rule 58.* The cantonment joint magistrate, having the powers of joint magistrate in the district, will, in concert with the magistrate, take effective steps to prevent liquor being brought into the barracks from places beyond the limits of cantonments.

Introduction of liquor.

899. *Rule 59.* The licensed vendors of spirits and drugs should be bound by the conditions of their licenses not to harbour robbers, thieves, and riotous persons, or to receive any goods or wearing apparel in barter for liquor or drugs. They should also be bound on to open their shops during the night, and to give information to the nearest police officer of any suspected persons who may resort to their shops.

Rules for abkars.

900. *Rule 60.* As parties engaged in smuggling liquor within cantonments will resort to every device and false complaint, to deter the police from interfering with their illicit gains, the officer commanding will accord to the joint magistrate his cordial support, in the management of this department, without which all efforts will be much impeded, if not frustrated.

Commanding officer to assist in preventing smuggling.

901. *Rule 61.* In his capacity as officer in charge of the sudder bazar, he is authorized to investigate without oath such trivial offences as are usually punished summarily by commanding officers in the case of soldiers and camp followers. He is authorized to exercise this power by the imposition of small fines not exceeding two rupees, exposure in the stocks not exceeding four hours, or confinement in the bazar guard not exceeding 24 hours. Every shopkeeper is to be required to keep his shop clear of all rubbish in front, and parties committing nuisances, and causing obstruction in drains, will be subject to such penalties.

Sudder bazar.

Trivial offences.

Rubbish and nuisances.

902. *Rule 62.* A separate register will be kept of these cases, and of the awards; and this will be submitted monthly for the information of the officer commanding the station, and a copy submitted for the information of the superintendent of cantonment police. Any additional information must be afforded which the commanding officer may require, and such orders or suggestions, as he may deem necessary for the more sufficient control of the bazar, must be attended to.

Register of cases and awards.

903. *Rule 63.* The kotwal and all public bazar servants are to be nominated or removed by the superintendent of cantonment police, or under his orders by the officer in charge.

Public bazar servants.

Excavations. 904. *Rule 64.* All excavations for earth, kunkur, &c., within the limits of cantonments, should be prevented, unless the sanction of the officer commanding, or other due authority has been previously obtained.

Kotwal. 905. *Rule 65.* The kotwal of the sudder bazar will be ex-officio the head of the chokee in which his bazar is situated, on the salary he now receives from government, but he is not entitled to any allowance for stationery.

Crier. 906. *Rule 66.* It is the duty of the flag or weighman to make known by beat of tom-tom any order or information to be published.

Police officers not to trade. 907. *Rule 67.* No kotwal, choudhuree, office-writer, or any other of the police or bazar establishment, is allowed to trade, or to engage in traffic, or to become indebted to any party within their jurisdiction. The kotwal, and the members of his family, should not be allowed to possess more than one house for a residence in the cantonment.

Procuring bunyas for corps marching. 908. *Rule 68.* Upon requisition to afford assistance in procuring bunyas, or other tradespeople, to accompany any regiment under orders of march, the utmost endeavors will be used to meet such a demand; but the regulations of the service do not admit of any part of the sudder bazar being detached with corps moving for a common relief; nor can any individual be required to give his services with the condition of having to find his way back at his own expense.

Arbitrations. 909. *Rule 69.* Panchayats should be encouraged in every instance to assist the adjustment of pecuniary disputes, and their decision should be upheld, not only by the officer in charge, but by the authority of the commanding officer, except in instances in which corruption may be established against the arbitrating parties. Should such be the case, or either of the parties object to submit to arbitration, the affair must be settled under existing regulations and orders. *Rule 70.* A written agreement should be taken from each party to abide by the decision of the panchayat: this will be recorded, and unnecessary procrastination by either party will be prohibited. *Rule 71.* Disputes regarding knocking down, or building, walls or drains in the bazar, will be adjusted in the same manner.

Nuisances. 910. *Rule 72.* Acts constituting a nuisance will be treated in the same manner by the officer in charge, who will proceed to the spot, and take measures to abate the nuisance; such cases are on no account to be entrusted to the police or bazar establishment. *Rule 73.* A copy of the order in such cases will be given to the parties concerned, duly signed, but such order will be subject to an appeal to the officer commanding the station.

Mohurir not to take payment for copies. 911. *Rule 74.* It should be explained to all parties that they are not to pay the mohurir for the copy of any orders passed in their cases, and the mohurir should be warned against exacting such payment.

Quarterly committee report of sudder bazar. 912. *Rule 75.* The usual quarterly committee report of the sudder bazar should be sent to the superintendent of cantonment police, and also, if required, to the deputy commissary general in the field.

Cleanliness of drains. 913. *Rule 76.* In forwarding this return to the superintendent, the officer in charge will himself make a report on the state of cleanliness of the drains, &c., of the bazars generally.

914. *Rule 77.* He should, with the sanction of the officer commanding the station, and after due warning, cause the removal of all ruins and decayed houses, in any part of the cantonment, to prevent their misuse. Ruins and decayed houses.

915. *Rule 78.* The bills for his own salary, rupees 64, and that of the sudder bazar establishment, should be presented for payment to the local deputy pay master, and audited by the military auditor general, except at Meerut and Cawnpore, which are otherwise provided for: the portion of his salary as cantonment joint magistrate and superintendent of abkaree, together with office establishments, being drawn and audited in the civil department. Pay for establishment.

916. *Rule 79.* Where the amount of assessment admits of it, the pay of the jemadars of each chokee will be rupees 16 a month, a duffadar will be appointed at rupees 5, the pay of chokeedars should never exceed rupees 4. Rate of pay.

917. *Rule 80.* As the chokeedaree tax is the only source for the payment of the police establishment, the subsistence of prisoners, the funeral expenses and the removal of paupers, contingent charges sanctioned by the superintendent, and the repairs of roads, drains, bridges, &c., in the several bazars; care must be taken that the expenses above specified are not allowed to exceed the income. Expenses not to exceed income.

918. *Rule 81.* Whenever it may be necessary for the cantonment joint magistrate to quit the station, the previous sanction of the officer commanding the station must be invariably obtained, and a duly qualified officer appointed to perform the duty. Leave to quit station.

919. *Rule 82.* In applications for general leave, the letter should specify the name of an officer to be temporarily employed as a substitute, with the sanction of the officer commanding the station. Such application should be sent through the superintendent of cantonment police for the sanction of government. Substitute.

920. *Rule 83.* The accompanying form of police report(a) is to be filled up and transmitted to the superintendent's office in duplicate, on the 1st of January of each year, for the information of government. Police report.

(a) FORM OF POLICE REPORT.

FROM
TO

SIR,

I have the honor to forward the Police Report of the Cantonment of

for the year

2. *Abkarree Collections.*—From the annexed comparative statement of collections of Abkarree Revenue for the years 1846, 1847 and 1848, it appears that (here must be explained any particular cause for increase or diminution of the contract for the year reported on, and if all has been realized.)

3. *Abkarree Fines.*—(Here must be explained the cause for excess or diminution of smuggling, and any extraordinary cases mentioned.)

4. *Abkarree Reward.*—(The particular circumstances under which any general increase or decrease has taken place must be explained.)

	1846.	1847.	1848.
Apprehended,	0	0	0
Acquitted,	0	0	0
Convicted,	0	0	0
Total,	0	0	0

5. *Abkarree Cases.*—(The particular circumstances under which any general increase or decrease has taken place must be explained.)

	1846.	1847.	1848.
3 Jemadars,	0	0	0
3 Duffadars,	0	0	0
22 Chaprasis,	0	0	0
Total,	0	0	0

6. *Abkarree Establishment.*—(Any increase or diminution of this establishment must be explained.)

Abkaree department.

921. *Rule 84.* The first six paragraphs refer to the abkaree department. In each of these the cantonment joint magistrate will enter full explanations of the increase or diminution of revenue, smuggling, rewards, fines, punishments, and expense of establishment, comparing the present returns with those of the two previous years.

	1846.	1847.	1848.
<i>Murder,</i>	24	11	0
<i>Homicide,</i>	5	9	0
<i>Dacoity,</i> { With murder,	0	1	0
	0	1	0
	0	0	0
	0	0	0
	0	0	0
<i>Highway Robbery,</i> { With murder,	0	5	0
	0	5	0
	1	2	0
	1	0	0
	0	1	0
	1	0	0
	0	0	0
<i>Burglary,</i> { Above 50,	84	11	0
	45	30	0
	98	80	0
	253	225	0
	0	0	0
	0	0	0
<i>Cattle Thefts,</i> { Above 50,	2	3	0
	36	34	0
	41	34	0
	5	4	0
	4	3	0
<i>Thefts,</i> { With use of drugs,	1	3	0
	50	32	0
	74	60	0
	430	386	0
	4	0	0
<i>Affrays,</i> { With murder,	0	1	0
	0	0	0
	0	0	0
	759	871	0
Total,	1818	1007	0
Total number concerned,	8299	3370	0
Total apprehended,	2388	2661	0

	1846.	1847.	1848.
<i>Remaining at the close of the year,</i> { Before Magistrate,	1	20	0
	25	6	0
Brought to trial,	2414	2687	0
<i>Released,</i> { By Magistrate,	1464	1028	0
	88	43	0
Total acquitted or released,	1502	1071	0
<i>Punished,</i> { By Magistrate,	864	156	0
	22	10	0
Total,	886	166	0
<i>Remaining,</i> { Before Magistrate,	20	36	0
	6	5	0
Total,	26	41	0
Value of property stolen, Company's Rupees	27091 0 4	6175 7 5	0
Ditto ditto recovered, Company's Rupees	10949 1 4	6171 8 0	0

922. *Rule 85.* The tabular statement and paras. 7 to 18, show fully the mode in which explanations of increase or decrease of crime are to be entered under their several heads; as also a detail of particular cases of importance, that the government may be able to judge of the efficiency of the cantonment joint magistrate, and of the establishment under him.

Increase of crime.

923. *Rule 86.* The 19th and subsequent paras. are applicable to a cantonment police as at present constituted. Under the several heads, the cantonment joint magistrate will enter a full explanation of receipts, disbursements, and expenses of establishments, in compari-

Police force.

7. From the foregoing comparative statement of crimes committed during the years 1846 and 1847, you will perceive that there is a considerable decrease in the crimes of murder, burglary, simple theft, cattle theft, and affrays, whilst on the other hand, there is an increase of six highway robberies, two dacoities, and four homicides.

8. The police have generally been very successful in apprehending criminals, and bringing the offences home to them. In the Appendix will be found a detail of each of the more heinous offences.

9. *Murder.*—Ten of these cases occurred in my jurisdiction, and one in the cantonment. In all ten cases the parties were taken up and convicted. In the cantonment case the murderer escaped, but was opposed in his retreat by a chokcedar, whom he mortally wounded.

10. *Homicide.*—In eight cases, the parties were taken up. In seven, committed to the sessions court; but in three cases the sessions judge did not convict. In one case, the party was not apprehended.

11. *Highway Robbery.*—In three cases, the parties were convicted, and a portion of the property recovered. In three others, several persons were apprehended and released for want of proof. Two cases, which occurred in the month of December, are still under investigation.

12. *Dacoity.*—One of these was a case in which an attack was made on a boat anchored on our side of the Ganges, by a party from Oude. The property carried off consisted principally of brass lotahs, valued at 436 rupees. The Police followed the party in Oude, and, with the aid of the Oude police, captured a great many persons, eventually all but ten were released. These were committed to the sessions court and five convicted. The second case occurred on the 17th of December, and is still under investigation. The house of one Teluk Muhajun was attacked, his son killed, and property, principally money, to the amount of 2733 rupees, carried off. The principal parties concerned are all known, and have been apprehended, and several have confessed: so far as I can judge, the zumeendar of the village planned the dacoity, and I am in great hopes of being able to convict him.

1846, 178 cases—1847, 121 cases—1848—
Value of property stolen—1846, 1604-2-9
—1847, 440-7-9—1848—.

13. *Burglaries.*—There has been a decrease of 57 burglaries, and the amount of property carried off is less than one-third of that in the preceding year.

14. *Thefts.*—There is also a decrease in the number of thefts, but the value of property stolen rather exceeds that of the former year.

15. *Cattle Thefts.*—These have not increased; but the crime is still a very prevalent one.

16. *Affray.*—There was one case only of simple affray, and 7 of the parties were convicted. That this occurred, was entirely owing to the remissness of the police. It took place in consequence of a dispute about possession between an auction purchaser and the old zumeendar. A burkundaz had been deputed to the village to prevent any disturbance, and when shortly afterwards both the tehseeldar and thanadar were informed that extra measures were necessary to prevent a fight, instead of acting at once they referred the matter to me for orders, and in the meantime the fight took place. Both of the officers had formerly always behaved well, and although I took the most serious notice of the offence, I was unwilling to proceed to the extreme penalty, dismissal, on account of their generally excellent character.

17. *Miscellaneous cases.*—This class of cases is on the increase; there is no doubt but the speed with which they are disposed of, induces the parties to bring them forward. Almost all these cases originate in petitions, which are taken daily. One result is, that affray is almost entirely suppressed. I should conceive that an increase of miscellaneous cases, and decrease of heinous offences, would show a general healthiness in the state of a police establishment, whilst the reverse would follow a contrary state of things.

18. *Value of Property Stolen.*—(An explanation to be here entered as to any great difference in the respective years, and a report made on any particular cases of loss or recovery.)

1846—1847—1848—.

son with the two preceding years; and report generally on the efficiency or otherwise of any individual of the establishment requiring notice. *Rule 87.* A statement of the principles by which the system of assessment of the chokeedaree tax has been regulated, the changes in-

Chokeedaree tax.

19. *Police Establishment.*—Independent of the sudder bazar establishment allowed by government, consisting of bazar

	1846.	1847.	1848.
Jemadars,	0	0	0
Duffadars,	0	0	0
Bukhshee,	0	0	0
Mohurirs,	0	0	0
Chokeedars,	0	0	0
Total,	0	0	0

serjeant at 20 Rs., kotwal at 40 Rs., writer at 25 Rs., choudhuree at 10 Rs., mutasuddis at 7 Rs., jemadar at 8 Rs., naib jemadar at 5 Rs., eight chaprasis at 32 Rs., weighman at 9 Rs., the police establishment for the several bazars is as stated in the margin, and is paid from the chokeedaree tax.

	1846.	1847.	1848.
1 Moonshee,	0	0	0
1 Nazir,	0	0	0
1 Mohurir,	0	0	0
1 Izahar Nuvees,	0	0	0
4 Chaprasis,	0	0	0
1 Duffry,	0	0	0
Total,	0	0	0

20. *Office Establishment.*—The office establishment was increased to its present state by order of the Honorable the Lieutenant-Governor, North Western Provinces, No. 3846, dated 4th October 1847. (Any increase or diminution must be explained, and the authority given.)

	1846.	1847.	1848.
Chokeedaree tax, ..	0	0	0
Fines,	0	0	0
Singara tax,	0	0	0
Total,	0	0	0
Unclaimed Property,	0	0	0
Total,	0	0	0

21. *Bazar Fund.*—The bazar fund for the support of the police arising under the several heads noted in the margin, has been increased since the 1st October 1847 by an improved assessment, by which the number of houses taxed is —, and the number exempted is —.

The increase of the chokeedaree tax on the old arrangement is —. (The particulars of any increase or diminution to be fully explained, when effected, and by whose authority.)

	1846.	1847.	1848.
Jemadars,	0	0	0
Duffadars,	0	0	0
Bukhshee,	0	0	0
Mohurirs,	0	0	0
Chokeedars,	0	0	0
Total,	0	0	0

22. *Expense of Police Establishment.*—(The detail expense of establishment should include each year under a distinct head all classes paid from bazar fund.)

	1846.	1847.	1848.
1 Moonshee,	0	0	0
1 Nazir,	0	0	0
1 Mohurir,	0	0	0
1 Izahar Nuvees,	0	0	0
Chaprasis,	0	0	0
1 Duffry,	0	0	0
Total,	0	0	0

23. *Expense of Office Establishment.*—(The expense of the office establishment must show any increase or diminution, and must be accounted for.)

31st Dec. 1846.—31st Dec. 1847.—31st Dec. 1848.—
24. *Balance of the Bazar Fund.*—(The balance of the bazar fund must show any increase or diminution, and must be accounted for.)

For 1846.—For 1847.—For 1848.—
25. *Contingent Charges.*—(The contingent charges should be stated so fully as to convey a general view of the purposes for which they were incurred.)

26. *Fires.*—(It must be enumerated how many fires have occurred during the last twelve months and the two preceding years; in what cases offenders have escaped, and in what have been captured.)

27. *Conduct of Police.*—(Here is to be noted the conduct of any of the establishment who may be deemed deserving of praise or censure.)

27. *General Remarks.*—In this paragraph will be entered any remarks or suggestions that the cantonment joint magistrate may think necessary to bring to the notice of higher authority, for the amendment or improvement of the police, or with a view to the better security of life and property within the cantonment.

roduced, and a note of the number of houses included, that were formerly omitted, and of those exempted from poverty or other causes, are to be entered. *Rule 88.* A review and comparison of the former with the present system will be desirable, so that the government may be enabled to judge of the equity and general effect of the views now adopted. *Rule 89.* It is necessary that the cantonment joint magistrate should enter into a full explanation of the increase or decrease of the different items of revenue and expenditure, more particularly of the decrease, that the government may be made aware of its propriety. *Rule 90.* The document should be complete in itself, and should constitute an annual report on all the joint magistrate's proceedings.

Comparison of systems.

Explanation to be full,

and complete.

924. *Rule 91.* The cantonment joint magistrate will furnish the magistrate of the zillah with an annual statement, according to the several forms prescribed for magistrates, and which may be applicable to the office of a cantonment joint magistrate, to enable the former officer to compile his returns for the whole zillah. The joint magistrate will also transmit to the magistrate a comparative monthly table of criminal offences and property stolen, agreeable to the printed forms prescribed for that purpose.

Annual and monthly assessment

925. *Rule 92.* For the blank forms required for these returns, application must be made in due time.

Blank forms.

926. *Rule 93.* The cantonment joint magistrate will investigate the following cases and act in accordance to the regulations in each: 1st. Cases made over to him by the officer commanding the station, or by the commanding officer of a regiment at the station. 2nd. Cases of disputes, thefts, assaults, bribery, &c., preferred by or against cantonment residents and camp followers, Europeans or others, not being officers or soldiers, European or native, and regimental camp followers. 3rd. Heinous crimes committed in cantonments, except such as may be committed by soldiers, European or native.

Judicial cognizance.

927. *Rule 94.* The decisions of the cantonment joint magistrate in criminal cases are subjected to appeal before the session judge; and he must adhere to all orders and regulations that exist for the civil administration of justice. *Rule 95.* The session judge can exercise a full control over his judicial proceedings in criminal trials, whether in receiving appeals from sentences, or from miscellaneous orders; he may also interfere during the investigation of any case, and in special cases may call for an English report. This does not apply to decisions under rules 61 and 72, for which, in his capacity of officer in charge of the sudder bazar, he is responsible to the officer commanding the station. The magistrate of the zillah has the power to remove to his file any criminal trial that comes in ordinary course under the jurisdiction of the cantonment joint magistrate. *Rule 96.* Appeals against the cantonment joint magistrate's judicial or criminal proceedings or decisions in all cases lie exclusively to the session judge; or, within the Punjab, to the commissioner or deputy commissioner of the district, as the case may be.

Appeals.

Powers of session judge.

Appeals.

928. *Rule 97.* When the attendance of officers or soldiers may be required, the cantonment joint magistrate will apply to the commanding officer of the corps or detachment; but such application is not necessary in cases of camp followers, residents of bazars, or domestic servants.

Attendance of officers or soldiers.

Difference of opinion.

929. *Rule 98.* In cases of difference of opinion between the magistrate and the cantonment joint magistrate, as a reference to the superintendent of cantonment police might be inconvenient, the joint magistrate will be guided by the commissioner of the division; but he will report the result to the superintendent, should he deem it necessary.

Books.

930. *Rule 99.* If the abridgement of the regulations by Skipwith is not in his office, he should procure it with the least possible delay; also Beaufort's Digest of the Criminal Law.

What cases to be taken up first.

931. *Rule 100.* All cases occurring at night, more especially where parties have been apprehended, should be first examined, so that the attendance of innocent people and the police establishment may be dispensed with as soon as possible; postponed cases can then be entered on.

Investigation.

932. *Rule 101.* In cases of thefts by gentlemen's servants, or others, the case should be made over to the jemadar of the chokee, or other responsible officer, for investigation. Suspected parties should never be sent to the hawalat till a thorough investigation has taken place, and a report been made to the cantonment joint magistrate.

Description of property stolen.

933. *Rule 102.* An exact description of property stolen, and of any suspected person, should be, without delay, furnished to each jemadar and sent to the joint magistrate of the nearest cantonment.

Burglary.

934. *Rule 103.* All cases of burglary should be reported immediately to the cantonment joint magistrate, and he should without delay proceed to the spot.

Budmashes.

935. *Rule 104.* The officer in charge of the sudder bazar will be careful not to allow it to become a harbour for thieves, and persons without the ostensible means of subsistence.

Register of trials;

936. *Rule 105.* A register of trials in the accompanying form, (a) is to be transmitted

(a) *Monthly Register of Trials made by the Cantonment Joint Magistrate of*

for the month of August 1851.

Number.	Names of Plaintiffs.	Names of Defendants.	Crime and value of property stolen.	Value of property recovered.	Date of apprehension of the defendants.	Sentences and Dates.	Remarks.
1	Gundesh,	Punchum, Gurwar, Beharee, Dabee, Budla, Ungnoo, Immertee and Chingee,	For assault, - - - - -	- - - - -	6th August 1851,	The six former fined 2 rupees each, and the two latter 1 rupee each, or 15 days' each imprisonment in default of payment. 8th August 1851.	Released on paying the fine.
2	Private Jenkins, H. M. 70th Foot,	Shoobanee, - - - - -	For stealing cloth, valued at 1 rupee,	- - - - -	8th ditto, -	Two years' imprisonment with labor. 26th August 1851.	An old offender.
3	Syfor, - - -	Nuzuf Ali and Bhan, - -	Nuzuf Ali for stealing jewels valued 5 Rs., and Bhan for purchasing the same knowing it to have been stolen,	- - - - -	7th ditto, -	Six months' each, imprisonment with labor. 7th August 1851.	
4	Bhuttoo, - -	Seetul, Buctour, Khosai and Mata Bukhah,	For assault, - - - - -	- - - - -	7th ditto, -	The plaintiff filed a razeenamah in the case. 12th August 1851.	
5	Budloo Ram,	Sonsoullah, - - - - -	For assault, - - - - -	- - - - -	8th ditto, -	Fined 10 Rs. or 15 days' imprisonment in default of payment. 9th August 1851.	Released on paying the fine.
6	Joorawar, - -	Jowahir, Seetland, Budloo,	For assault, - - - - -	- - - - -	8th ditto, -	The former fined 10 Rs. or 15 days' imprisonment in default of payment, and the two latter released. The charge not proved against them. 15th August 1851.	Released on paying the fine.
7	Government,	Seodeen, - - - - -	For breaking out of the hawalat, whilst a prisoner there,	- - - - -	9th ditto, -	Six months' imprisonment, with labor. 14th August 1851.	
8	Sookheeah,	Bhowanideen, - - -	For assault,	- - - - -	12th ditto, -	The plaintiff filed a razeenamah in the case. 14th August 1851.	

monthly to the superintendent of police; and also of felonies committed in cantonments (b) and of felonies against person or property by parties who have not been apprehended; so that the two registers will contain the total amount of crime within the month. A copy of the register submitted to the commanding officer under rule 75 should also be sent. Rule 106. In the column of remarks it should be stated, what steps have been taken in each case, to what native officer the investigation of the charge has been entrusted, and what information has been obtained likely to lead to detection, so that the merits of the jemadars, as well as of the several chokeedars, may be tested.

Outline of cases.

Monthly Register of Trials by the Cantonment Joint Magistrate of

for the month of August 1851. (Continued).—

Number.	Names of Plaintiffs.	Names of Defendants.	Crime and value of property stolen.	Value of property recovered.	Date of apprehension of the defendants.	Sentences and Dates.	REMARKS.
9	Munsook, Hurree, Ferah-dee, and Kis-soree,	Chedee,	For stealing cloth, valued Rs. 13-12,	Recovered 10 Rs.	12th ditto, . .	Six months' imprisonment with labor, and six months' additional imprisonment in lieu of corporal punishment. 12th August 1851.	
10	John Hughes,	Peer Bukkah,	For adultery,	-	13th ditto, . .	Dismissed. The charge not proved against him. 13th August 1851.	
11	Abdoolah, .	Ruheem Ali,	For stealing property, valued Rs. 11-7,	Recovered 7 Rs.	22nd ditto, . .	Dismissed. The charge not proved against him. 22nd August 1851.	
12	Gopal, . . .	Joalla, Deveedeen, Gocoolla, Heeralal, Chingee, Matadeen, Gunesh, Ungnoo, Jees Lal, Heera, Mohun, Manooch, Tara, Sham Lal, Deenah, Jhubbooh and Kalloo, .	For assault,	-	23rd ditto, . .	Joalla fined 8 Rs. Deveedeen, Gocoolla and Heeralal at 4 Rs each, and the latter 13 at 2 rupees or 15 days' imprisonment. 26th August 1851.	Released on paying the fine.
13	Government, .	Deenah,	For murder,	-	25th ditto, . .	Committed to the sessions court for trial. 29th August 1851.	
14	Gungoo, . .	Radha Kishen,	For assault,	-	28th ditto, . .	Under trial.	
15	Gungadeen, .	Bukha and Bhujiah, . .	For abuse,	-	29th ditto, . .	The plaintiff filed a raseenamah in the case. 29th August 1851.	

Cantonment Joint Magistrate's Office,
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(b) Monthly Register of Felony Cases in the Cantonment of , when the offenders have not been apprehended, during the month of August 1851.

Date.	Names of chokeedars in whose beat the offence took place.	Names of Plaintiffs.	Names of Defendants.	Crime and value of property stolen.	Value of property recovered.	What steps taken or information obtained.	Remarks.
24th Aug. 1851,	3 Gyadeen Bauri,	Mr. Littlefield,...	Unknown,...	For stealing property, valued 21 Rs.	... ..	Investigated by Jhow-lal, jemadar. No information obtained.	The property stolen from the verandah of the plaintiff's bungalow; but no one suspected. Chokeedar punished and turned out of cantonments for carelessness whilst on duty.
29th Ditto, ...	3 Ditto,	Capt. Brownlow, 1st Cavalry,	Ditto,	For stealing property, valued Rs. 8-14.	... ..	Investigated by Jhow-lal, jemadar. No information obtained.	The property stolen from the cook-room. Chokeedars dismissed and turned out of cantonments for negligence.
30th Ditto, ...	3 Sheodeen Bauri,	Mundaree, mul-lah of Suteeo Chouhan,	Ditto,	For stealing property, valued Rs. 235-8.	... ..	Investigated by Jhow-lal, jemadar. No information obtained.	The chokeedar suspected by the plaintiff, but no sufficient proof to convict him. Chokeedar turned out of cantonment's.

Cantonment Joint Magistrate's Office,
The 185 }A. B.,
Cantonment Joint Magistrate.

- Record of orders.** 937. *Rule 107.* A book should be kept in the joint magistrate's office for the record of all orders that may be issued by authority connected with his department or duties, to which immediate reference can be made; also a vernacular one of all his orders to the police.
- Registers.** 938. *Rule 108.* The following registers should be kept up:—register of police:—ditto of chokeedars, public:—ditto of ditto, private:—ditto of residents:—ditto of officers' servants:—ditto of trivial offences.
- Co-operation with magistrate.** 939. *Rule 109.* A cordial communication and co-operation with the magistrate of the zillah are indispensable to the efficient working of these arrangements.
- Commissariat.** 940. *Rule 110.* The commissariat officers should be furnished with any return of carriage, cattle, grain, or other articles, which they may require; and on all occasions the most cordial assistance should be rendered in furtherance of the public service, so that the government and commissariat officers may feel no actual want of information, or diminution of resources, from the transfer of the sudder bazars from their charge. Any instance of inability to comply with any of their requests, should be reported to the superintendent. *Rule 111.* Previous enquiries as to the best mode of obtaining rahwaree camels, or other carriage, should be made so as to provide as well for the public services as for private parties. Rates should be equable, and as low as possible, so that neither the government, nor individuals, may suffer injustice. Upon this point a report of what is deemed practicable should be made to the superintendent.
- Weekly markets.** 941. *Rule 112.* A report should be made to the superintendent as to the existence of weekly bazars or haths; and also as to whether the establishment of such markets in any place might be calculated to have a good effect in abating any monopoly of grain, &c., by arthis or others in the sudder or other bazars. This, however, can only be done with the sanction of the officer commanding; and no sort of tax should be levied on such markets.
- To reduce prices by competition.** *Rule 113.* If by fostering competition the joint magistrate can induce a diminution of prices, the advantage that government must derive from it will be very great. Independent as he should be of the commissariat, he should bestow considerable attention on these subjects, recollecting that, after the purposes of government have been served, he is bound to give satisfaction to the public, both European and native, and that, unless this be rendered, his office can never be deemed efficiently served.
- Complaints against police.** 942. *Rule 114.* Complaints against the bazar or police establishments should be preferred to the cantonment joint magistrate, or to the superintendent of cantonment police, for investigation.
- Origia of fire.** 943. *Rule 115.* In every instance of fire, the cantonment joint magistrate will make the most minute enquiries; and, if there is the slightest reason to suppose that it has arisen from incendiary attempts, he will take every lawful means for the apprehension of the offenders.
- Box for petitions.** 944. *Rule 116.* A box, for the reception of petitions, should be hung up in some public accessible place uncontrolled by any one on the police establishment, and the key kept by the joint magistrate. The petitions should be read, and orders given upon them, if possible, in the presence of the parties complaining.

945. *Rule 117.* The joint magistrate should use his best exertion to induce residents of the several bazars to retain hackeries for public hire, by affording them every protection, and ascertaining that they are properly paid. *Rule 118.* Whenever he provides hackeries, they should be paid half hire in advance, and furnished, on the completion of their arrangements, with the following certificate, to protect them from seizure. “_____gariwan has engaged to proceed from_____to_____with—hackeries with_____. His carts are to be released at_____, and he will be entitled to a period of—days after discharge to return home; during which no one is to press his carts or molest him.” The same to be also written in Persian. *Rule 119.* In the event of the owner of the cart so employed having just grounds of complaint, the joint magistrate should bring it to the notice of the proper authorities.

Hackeries for public hire.

Certificate of gariwan.

Complaint of gariwan.

946. *Rule 120.* Commanding officers of corps will give every aid to the cantonment magistrate in carrying out these rules, with respect to the residents of the bazars of their respective corps. On entering cantonments, they will cause the magistrate to be furnished with a list of those registered as attached to their regimental bazars.

Commanding officers to give aid to cantonment joint magistrate.

SECTION XVIII.

OF THE SUPERINTENDENT OF POLICE IN THE CAMP OF THE GOVERNOR GENERAL.

947. As often as the governor general of India, or the commander-in-chief of all the forces in India, or the lieutenant governor of the North Western provinces, shall pass through any part of the territories of the East India Company attended by a camp, it shall be lawful for the governor general in council, or by an order in council, to appoint a superintendent of police of such camp. Act XXVI. 1836, sect. 1.

Appointment.

948. With respect to all offences committed in any such camp, or on the line of march between the stations of any such camp, such superintendent shall have concurrent criminal jurisdiction with the magistrate of the zillah or city, within which such offence shall have been committed. Act XXVI. 1836, sect. 2.

Jurisdiction.

949. As often as the said superintendent shall, by virtue of such powers, commit any person for trial before the sessions court, or sentence any person to imprisonment, it shall be lawful for him to transmit such person to the magistrate of the zillah or city, where the camp shall then be, with a copy of the commitment or sentence under his hand, and the magistrate shall give effect to such commitment or sentence. Act XXVI. 1836, sect. 3.

Prisoners committed or sentenced are to be sent to the magistrate.

950. All officers subordinate to the magistrate of the zillah or city, where such camp shall be, are to be assisting to the superintendent in the exercise of the powers conferred on him by this Act, in the same manner as they are bound to be assisting to the magistrate. Act XXVI. 1836, sect. 4.

All officers subordinate to magistrate are to assist.

Appeals from.

951. Appeals from decisions and orders of such superintendent are cognizable by a session judge, in the same manner and under the same restrictions as appeals from the decisions and orders of a magistrate, or other officer empowered to try criminal cases, are admissible. Const. No. 1370.

SECTION XIX.

OF THE FUNCTIONS OF A JUSTICE OF PEACE.

The governor general in council and the judges of the supreme court were such originally ;

and the former were authorized to hold quarter sessions four times a year.

Governor general in council may appoint covenanted servants or other British inhabitants, for each presidency and the places subordinate thereto ;

but for the town of Calcutta any properly qualified resident of British India, who is not a foreign subject.

Appointments to be by commissions from the supreme court on a warrant from the governor general in council.

The supreme court on written requisition from government to supersede such commissions and issue new ones.

Such commissions to be filed in the court of oyer and terminer of the presidency.

Supplementary commissions may be issued at any time.

952. By stat. 13 Geo. III, c. 63, sect. 38, the governor general in council and the chief justice and other judges of the supreme court were respectively declared to be, and to have full power and authority to act as, justices of the peace for the settlement of Fort William and for the several settlements and factories subordinate thereto, and to do and transact all matters and things which to the office of a justice or justices of the peace do belong and appertain ; and the governor general and council were authorized to hold quarter sessions four times in every year ; the same to be at all times a court of record.

953. The statutes 21 Geo. III, c. 65, and 33 Geo. III, c. 52, sect. 151, empowered the governor general in council to appoint covenanted servants of the Company or other British inhabitants, whom he might think properly qualified, to act as justices of the peace, within and for the several presidencies and the provinces and places thereto subordinate respectively.

954. By stat. 2 and 3, Will. IV, c. 117, sect. 1, the governor general in council is authorized to nominate and appoint in the name of the Crown any persons resident within the territories in the possession and under the government of the East India Company, who are not the subjects of any foreign state, and whom he shall think properly qualified to act as justices of the peace within the town of Calcutta.

955. Such appointments are to be made by commissions to be from time to time issued under the seal of the supreme court of the presidency in the name of the Crown, and tested in the name of the chief justice ; and the supreme court is authorized and required from time to time, upon an order or warrant from the governor general in council, to issue such commissions accordingly. Stat. 33 Geo. III, c. 52, sect. 151.

956. The supreme court, on any requisition in writing from the governor general in council, shall and may from time to time supersede such commissions ; and, upon like requisition, issue new commissions for the purposes aforesaid unto the same, or such other of the covenanted servants of the East India Company or other British inhabitants, as shall from time to time be so nominated by the governor general in council. *Ibid.*

957. All such commissions are to be filed on record in the respective courts of oyer and terminer of the province, presidency, or place, wherein and for which the same shall be issued. *Ibid.*

958. The supreme court shall and may from time to time, upon the order or warrant of the executive government, issue separate commissions to any persons not named in the

general commission of the peace last issued, who by law are capable of being appointed to the office of justice of the peace, and who shall be nominated and appointed by such executive government to act as justices of the peace. All such commissions shall be issued in the name of the Queen's majesty, her heirs and successors, under the seal of the supreme court, and tested in the name of the chief justice of the said court, and shall be filed on record in the court of oyer and terminer, as supplementary to the general commission of the peace last issued, which shall remain in full force. Act VI. 1845.

959. The form of commission now issued to justices of the peace for the provinces of Bengal, Behar, and Orissa, and the presidency of Fort William, and the places subordinate thereto, is, as follows:—

Form of commission now issued to justices for Bengal, Behar, and Orissa, &c.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the faith, to our trusty and well-beloved A. B. C. D. &c., being respectively servants of the East India Company, and being all respectively British inhabitants of the presidency of Fort William in Bengal, or of the provinces, districts, and countries of Bengal, Behar, and Orissa, or of places subordinate to the said presidency of Fort William in Bengal, or of some or one of them, and not subjects of any foreign state, GREETING:—WHEREAS our trusty and well beloved the Right Honorable Charles John, Viscount Canning, Governor General of India in council, has, by virtue and in pursuance of the several Acts of Parliament, Acts of the Legislative Council of India, and Charters, in that behalf authorizing him, duly made his certain order or warrant, bearing date the eighteenth day of July in the year of our Lord one thousand eight hundred and fifty-six, and addressed to our chief justice and other our justices of the supreme court of judicature at Fort William in Bengal, for the issuing of a commission of the peace nominating and appointing you severally and respectively to act as our justices of the peace, to keep our peace within and for the said provinces, districts, or countries of Bengal, Behar, and Orissa, and within and for the said presidency of the Fort William in Bengal, and places thereto annexed, subject, or subordinate, according to all the powers and provisions of the Statutes, Charters, and Acts, now in force for the appointment of such justices of the peace, and the true meaning and construction thereof:—NOW KNOW YE that we have accordingly assigned you and each and every of you to be our justices to keep our peace within and for the said provinces, districts, or countries of Bengal, Behar, and Orissa, and within and for the said presidency of Fort William in Bengal and places thereto annexed subject or subordinate, and to keep and cause to be kept all Statutes, Acts, Rules, Regulations, and laws, made for the good of our peace and for the conservation of the same, and for the quiet rule and government of our subjects and people in all and every the articles thereof, within the said provinces, districts, and countries of Bengal, Behar, and Orissa, and within and for the said presidency of Fort William in Bengal and places thereto annexed subject or subordinate according to the force form and effect of the same; and to chastise and punish all persons offending against the form of those Statutes, Acts, Rules, Regulations, or laws, or any of them, within the said provinces, districts, and countries of Bengal, Behar, and Orissa, and within and for the presidency of Fort William in Bengal and places thereto annexed subject or subordinate, as, according to the form of the Ordinances, Acts, Statutes, Rules,

Regulations, and laws, or any of them, shall be fit to be done; and to cause to come before you respectively all those persons who shall have used threats to any one or more of our subjects and people touching their bodies or persons, or the burning or firing of their houses, to find sufficient security for the peace or for their good behaviour towards us and our subjects and people; and, if they shall refuse to find such security, then to cause them to be kept safe in some or one of the prisons of the said provinces districts and countries of Bengal Behar and Orissa, or of the said presidency of Fort William in Bengal or places thereto annexed subject or subordinate, until they shall find such security: and further to do and cause to be done all other acts to the said office of a justice of the peace appertaining, which under and by virtue of the said Statutes, Acts, Rules, Regulations, and laws, now in force or which may hereafter be in force, or any or either of them, may lawfully be done by any justice of the peace within the said provinces districts and countries of Bengal Behar and Orissa, and the said presidency of Fort William in Bengal and places thereto annexed subject or subordinate: and therefore we command you, and each and every of you respectively, diligently to apply yourselves to the keeping of our peace, Statutes, Acts, Rules, Regulations, and laws, and the Acts of the governor general of India in council, and all and singular other premises, and to perform and fulfil the same in form aforesaid, doing therein that which to justice appertaineth according to the said laws, Statutes and Acts, saving to us the things to us in respect thereof belonging:—and we do hereby associate you with our justices of the peace, in and for our said provinces, districts, and countries, of Bengal, Behar, and Orissa, and the said presidency of Fort William in Bengal and places thereto annexed subject or subordinate, under any existing commissions or commission of the peace for the said provinces, districts, and countries, of Bengal, Behar, and Orissa, and the said presidency of Fort William in Bengal, and places thereto annexed subject or subordinate; which we hereby ratify confirm and continue, and direct you and them to be associated together and aiding each other in the discharge of the duties of such justices of the peace in and for the said provinces districts and countries of Bengal Behar and Orissa, and the said presidency of Fort William in Bengal and places thereto annexed subject or subordinate. Witness Sir James William Colville, Knight, chief justice of our said court, the eighteenth day of August in the year of our Lord one thousand eight hundred and fifty-six, and in the twentieth year of our reign.(a)

Commissions
comprise all civil
officers.

960. Commissions of the peace have been issued from the supreme court, comprising the names of all the covenanted civil officers, military officers holding civil appointments, and deputy magistrates, employed under this government. C. O. No. 213 of vol. 3, and No. 51 of vol. 4. *L. P.*

Justices not
qualified to act un-
til duly sworn,

961. No person nominated and appointed in and by such commission was capable of acting as a justice of the peace in any of the said provinces or presidencies, until he had taken and subscribed in the court of oyer and terminer of the province or presidency for which he was appointed, the like oaths as were appointed to be taken by justices of the peace in Great

(a) This form of commission is, *mutatis mutandis*, identical with that issued to the justices for the town of Calcutta. But the commission of the peace issued to justices in England, wanting all the recitals contained in the Indian commissions, confers in addition on any two or more of the justices power to hold sessions, and to refer cases of difficulty to the Assizes. Such powers, as explained in the text, are not vested in Indian justices.

Britain, the oath of qualification prescribed by stat. 18, Geo. II., c. 20, relating to estate only and always excepted. 33 Geo. III. c. 52, sect. 152.

962. The necessary oaths were subsequently allowed to be taken and subscribed in any civil or criminal court of justice within the provinces, in and for which any such commission may have been issued, before any other justice of the peace: and such subscriptions were required to be deposited and kept with the records of such court of justice. 53 Geo. III., c. 155, sect. 12.

in some court of justice of the presidency,

963. All persons nominated and appointed in any commission of the peace are now capable of acting as justices of the peace in every respect, according to the tenor of such commission, upon taking and subscribing in any civil or criminal court of justice, within the places in and for which any such commission has issued, before the officer presiding in such court, whether such officer be a justice of the peace or not, the oaths appointed to be taken by justices of the peace; and the subscription of such persons to the said oaths are to be deposited and kept with the records of the courts of justice in which the said oaths have been administered. Act XVI. 1841, sect. 1.

before the officer presiding there, whether such officer be himself a justice of the peace or not.

† *v. Appendix C. No. 7.*

964. All persons appointed to the station of zillah or city magistrate are required to take the prescribed oath of qualification within six months from the date of their appointment: unless in any particular instance it should be necessary or convenient to defer the same to a later period, in which case the court of nizamat adawlut, on application being made to them, are authorized to grant such extension as they may judge proper, so that in no instance, without the sanction of the governor general in council in cases of emergency, the taking the oath shall be deferred beyond a twelve-month from the date of appointment of any zillah or city magistrate hereby required to take the same. Reg. II. 1796, sect. 4.

Justice must be sworn within six months,

except in peculiar cases.

965. The powers of justices of the peace are derived from the commission appointing them, and from the statutes by which in each particular instance special powers are conferred: and as that portion of their powers which relates to summary conviction (at the present day by far the most important portion) is clearly derogatory of the common law right of every man to be tried by his peers, it is not held to pass by anything short of express legislative enactment. The terms of the commission of the peace do not, either in England or in this country, confer any power of summary conviction, but extend rather to the prevention than to the punishment of a breach of the peace. Under them the powers of a justice are nearly identical with those of the ancient conservators of the peace; and he may demand bail, bind over to keep the peace, and adopt other precautionary measures, but cannot punish. There are however a number of statutes by which the powers of justices of the peace in England have been very largely extended, and so many of these as date previous to the year 1726, the 13th year of the reign of George I, and as are applicable to the circumstances of this country, may be acted upon both by the justices for the presidency of Fort William, and by those for the town of Calcutta. But subsequently to that date the statute law of England does not extend to this country, unless this country is expressly referred to in it: and with the exception of a few minor offences (the enactments regarding which are scarcely applicable to India) such as offences regarding the game and excise laws,

Powers of justice depend upon his commission and on the express enactments.

Commission confers no powers of summary conviction.

Statutes passed subsequently to the year 1726 confer on English justices large summary powers, which have not been extended to Indian justices.

Summary powers conferred by antecedent statutes few and inapplicable to India.

profane swearing, drunkenness, observance of the sabbath, and so on, all the powers of summary conviction which have been bestowed upon justices in England have been conferred subsequently to the year 1726, and have not been extended to this country. This fact appears to have been overlooked by the framer of stat. 9, Geo. IV. c. 74, which, while it confers on justices in India some of the powers then recently conferred on justices in England, wholly omits to invest them with the powers which had long previously been daily exercised by the latter class of officers.

Summary powers bestowed by stat. 9 Geo. IV. c. 74, expressly extended to India, and by Acts of Legislative Council.

966. The result is that the only powers of summary conviction possessed by a justice of the peace for Bengal, Behar, and Orissa, and the presidency of Fort William in Bengal, and the provinces and places annexed thereto—exclusive of those conferred recently by the Indian legislature—are those conferred by sections 75, 91, 92, 97, 113, 121, and 124, of stat. 9, Geo. IV. c. 74; other sections of which also contain provisions for the holding to bail or commitment of prisoners. These sections, as well as the Acts of the Indian legislature which confer powers of summary jurisdiction on justices of the peace, will be found in the chapter on European British subjects, over whom only the jurisdiction of a justice extends.

Powers of two justices vested in one.

967. All powers whatever in criminal cases, which may be exercised by two justices of the peace within and for the provinces, districts, and countries of Bengal, Behar, and Orissa, and within and for the presidency of Fort William in Bengal, and places thereto subordinate, may be exercised by one such justice. Act XXXII. 1838, sect. 1.

Powers of the Calcutta justices.

968. It is only necessary to remark further that the powers of the justices for the town of Calcutta were specially extended by certain Rules, Regulations, and Ordinances, which were enumerated in and repealed by Act XIII. 1852, an Act which has been in itself repealed, (but not so as to revive the Rules, Regulations, and Ordinances above mentioned) by Act XIII. 1856. They are also clothed with all the powers with which Indian justices generally have been invested by either the Imperial or the Indian legislature; but no officer can exercise the powers conferred by Act XIII. 1856, who is not a police magistrate as well as a justice of the peace.

SECTION XX.

OF COMMITMENTS.

Power to commit.

969. All officers invested with the full powers of magistrate, are competent to make commitments to the sessions in cases referred to them, which may be beyond their competency to decide. C. O. No. 173 of vol. 3.

Joint magistrate.

970. An order for commitment made by a joint magistrate, residing at the sudder station without independent authority, is not liable to reversal by the magistrate of the district: this can only be done by the session judge. All joint magistrates without independent jurisdiction are competent to make commitments, unless expressly interdicted by the magistrate (under rule 6 of the resolution of government, dated November 1st 1831);* and it is not competent to the magistrate to revise their commitments. Const. Nos. 906 and 911.

* v. para. 750.

971. It was ruled by government on the 7th July 1835 (under Act VII. 1835), that all session judges, or other officers exercising the powers of session judges, are competent to order a magistrate to commit any person or persons (connected with a trial pending before them), whom the magistrate has not thought fit, or objects to bring to trial. [C. O. No. 175 of vol. 2, and Const. No. 986.] But, after the passing of Act XXXI. 1841, it became a question how far the session judge is competent, under the terms of that law, to direct the apprehension, with a view to commitment for trial, of a person, the charge against whom has, either with or without the arrest of the party, been investigated and dismissed by the magistrate on the ground of the insufficiency of the proof against him, or from other cause; in cases which would, if proceeded with, be respectively within or beyond the magistrate's power to dispose of on trial by a final order. In cases of the former description, viz. those which the magistrate can decide of his own authority, it is agreed that the order of that officer for dismissal of the charge must be viewed as a legal acquittal; and cannot, in any view, be considered tangible by the sessions court. But as regards cases beyond the magistrate's competency to try, there is a difference of opinion; the Calcutta court decides that the sessions court has no power of interference; while the Western court allows such powers, but requires the session judges to exercise it with caution and discretion, and never to subject to commitment and trial, without good grounds, a person in such case released by the magistrate. C. O. No. 123 of vol. 3. *W. P. Reports* *W. P.* 1855, part 1, page 623. *Reports L. P.* 1852, part 1, pages 60 and 474; 1854, part 2, page 624; and 1856, part 1, page 953.

How far the judge is competent to order the commitment of a person released by the magistrate;

972. The session judge cannot direct the commitment of the accused person in such cases, whether the magistrate has released him on account of the insufficiency of the evidence, or from a disbelief in the truth of the charge. His power extends only to calling for fresh evidence in regard to prisoners on trial before himself; except in so far as he may direct a recommitment on a higher charge. A magistrate cannot *acquit* a defendant in a case, which is not within his legal competency to *decide*; but by cl. 2, sect. 2, Reg. VIII. 1830, he is authorized to release prisoners on his own judgment, if he thinks that, on all the evidence against them, there is not a reasonable probability of a legal conviction. A session judge has no authority like that of a public prosecutor, and no general superintendence over the proceedings of a magistrate; though he may of course intimate to the magistrate his opinion of the propriety of sifting all the evidence against a person not committed and of considering whether he should not be sent up for trial. *Reports L. P.* 1852, part 1, page 695.

whether the magistrate considers the evidence insufficient or disbelieves the charge.

973. A magistrate may not commit, for a second trial before the sessions court, any person already tried and acquitted on the same charge by a competent tribunal, whether the court of sessions or nizamat adawlut. But this does not preclude the magistrates from committing for trial before the sessions, in cases cognizable by that court, persons who have been before apprehended and discharged by a magistrate from want of evidence, if further evidence in support of the charge should appear to warrant the measure. C. O. No. 177 of vol. 1.

Judge has no general power of superintendence over proceedings of magistrate.

Person once tried and acquitted cannot be again committed on the same charge.

974. A prisoner tried before the sessions court for one offence and acquitted thereof, may be again committed by order of the court for another crime, of which from the evidence

A prisoner charged with one offence may be re-committed on

another, which appears in the evidence on trial.

produced before the court he appears to have been guilty. Thus a prisoner was acquitted of being an accomplice in murder, but was directed to be brought to trial for having received part of the property of which the deceased was robbed. N. A. R. vol. 4, page 32. So, where the prisoners had been acquitted of the charge of receiving and feloniously retaining in their possession property obtained by embezzlement, and were afterwards committed for receiving property obtained by burglary. The plea of *autrefois acquit* cannot be upheld, unless the facts contained in the second indictment would have sustained the first indictment. Reports L. P. 1851, page 1601.

Witnesses on trial implicating themselves in the offence charged may be committed on such charge.

975. It appearing from the evidence of certain witnesses in the course of a trial before the court of circuit, that they were concerned in the act with which the prisoners stood charged, the court directed the judge of circuit to consider the proceedings on the trial held before him, and on which his reference was founded, as incomplete; and ordered a further investigation of the case at the ensuing sessions, the charge being drawn up as well against these witnesses as against the prisoners first indicted, to whom leave was given to make a supplementary defence. It was also ordered that if no evidence could be found against these fresh prisoners, except that furnished by their own depositions on oath, some of the least guilty among them were to be offered a free pardon, on the condition of their disclosing all the circumstances of the case, which might have come within their knowledge. N. A. R. vol. 2, page 14. (a)

Session judge and civil courts are empowered to commit in cases of perjury only. In other cases they can only forward the proceedings to magistrate, who will act on his own judgment;

976. Under special rules the session judge, and the civil courts, are empowered to commit persons chargeable with perjury or subornation of perjury, in cases instituted before them; but they have no power to commit persons charged with any other offence. In proceedings before them, if grounds appear to exist for bringing to a criminal trial persons accused of embezzlement,—or of forgery (sect. 2, Act I. 1848)—or presenting or filing a petition with the fraudulent intent of obtaining money already paid (Const. No. 925)—or of fraud (Const. No. 1225)—they should forward the proceedings to the magistrate, directing the government pleader to prosecute the case. The magistrate however, in committing or releasing the person charged with such offence, will act on his own judgment on a fair consideration of the evidence adduced. Const. Nos. 691, and 975. But it seems that such courts have no power to originate a prosecution in cases of misdemeanors, such as fraud and conspiracy, or other offences not declared to be unbailable.* The prosecution must be initiated by the aggrieved party; but the courts may bring the circumstances to the notice of the magistrate or the superintendent of police. C. O. No. 11, April 5, 1853, W. P. Reports L. P. 1854, part 2, page 636.

but such criminal prosecutions must be originated by aggrieved parties.

*See paras. 338 and 344.

Judge may not himself commit a moonsiff charged with corruption, &c.

977. In the case of a moonsiff charged with corruption, or other misdemeanor, the judge should confine himself to a preliminary enquiry, and should then, if he see fit, direct the government pleader to prefer a charge of corruption against the moonsiff before the magistrate. N. A. R. vol. 5, page 151. Const. No. 1069.

(a) Under sect. 32, Act II. 1855 no person can be subjected to arrest or prosecution on account of any answer, which as a witness he has been compelled to give after objecting to the question on the ground that the answer may tend to criminate him.

978. A magistrate, after he has committed a prisoner for trial, cannot legally quash the commitment, release one or more prisoners, and make him or them witnesses for the prosecution on the same trial. (a) Const. No. 857.

Magistrate may not quash his own commitment.

979. When the magistrate, in a case beyond his competency, has examined the complainant and witnesses for the prosecution (under sect. 5, Reg. IX. 1793), and has taken evidence on behalf of the accused (under cl. 1, sect. 2, Reg. VIII. 1830), with a view of affording him an opportunity of establishing his innocence before committing him, he is to discharge the accused, if he considers the accusation groundless; or to commit him to the sessions, if it appears that there are reasonable grounds for suspecting him to have been concerned in the perpetration of the offence charged. But a commitment should not be made on bare suspicion, where the evidence does not afford probable ground for conviction on trial; for, if conviction appear improbable, the commitment would not only be useless, and unnecessarily harassing to the accused and the witnesses, but also objectionable, as precluding conviction and punishment on evidence which might be subsequently obtained. Reg. IX. 1793, sect. 5. Reg. VIII. 1830, sect. 2. C. O. No. 54 of vol. 2, para. 13. See paras. supra 371 to 378.

Rules for making.
When to commit, and when not.

980. A magistrate is justified in releasing conditionally a prisoner, the evidence against whom does not justify a commitment; because in such a case he can be put on his trial at any future period, should further evidence render such a measure expedient; whereas, if committed and acquitted, he could not be tried a second time. N. A. R. vol. 6, page 43. If the charge be one beyond the competency of a magistrate, his order for the release of a prisoner has not the force of an acquittal.

Conditional release.

981. When a prisoner had evaded arrest until after the trial of his accomplices in the sessions court, it was held that the magistrate should have re-examined the witnesses for the prosecution, and confronted them with the prisoner before committing him. Reports *L. P.* 1854, part 1, page 365.

Witnesses whose evidence has been taken in the absence of the prisoner, should be confronted with him before commitment.

982. When the calendar is under preparation, the magistrate must consider the due weight and bearing of the evidence of each witness; and he should exclude from it all witnesses, whose evidence is not directly material to the proof of the crime charged. Reports *W. P.* 1853, part 2, page 1451.

Only those witnesses to be named in calendar, whose evidence is material.

983. When the prisoner after the commission of the crime charged absconded from the village and was apprehended lurking in the jungle, the court remarked that the magistrate should have sent up evidence to these facts. N. A. R. vol. 6, page 266.

But all evidence bearing on the guilt of the prisoners should be sent up.

984. The testimony of a single witness, if there be no apparent reason to discredit it, is sufficient for commitment.* But, at the same time, it is incumbent on a magistrate, previous

Evidence of a single witness sufficient.

* See para 568.

(a) "The committing officer should not have power of his own authority to withdraw an indictment and cancel a commitment made by him; but if, after making a commitment and submitting an indictment to the sessions court, he obtains new evidence, with reference to which he thinks it proper to revise the indictment, it should be competent to him on such grounds to apply to the sessions court to return the indictment, in order that it may be revised and amended if necessary, and to remand the defendant to be present at the further examination intended; and the sessions court should have power to pass such orders accordingly." *Report of Law Commissioners, February 1, 1848, para. 76.* See rules *infra* for cancelling commitments.

to putting a prisoner on trial on solitary testimony of this description, to satisfy his own mind as to the credibility of the witness, by taking evidence to any points calculated to establish or disprove his testimony, by whomsoever such evidence may be indicated. C. O. No. 48 of vol. 2. Const. No. 634.

Not more than two witnesses to a oath required.

985. It is unnecessary to bind over more than two witnesses to a oath to give evidence before the sessions; it being always optional with the judge to summon the other individuals who may have witnessed it, in the event of his finding that their presence at the trial is indispensable. C. O. No. 49 of vol. 2.

Private prosecutor not requisite.

986. It is not requisite in order to authorize a commitment, that a complaint should have been made by a private prosecutor. N. A. R. vol. 1, page 277.

Prosecution to be in the name of government.

987. In all heinous cases, the magistrate in the *lower provinces* must make the government prosecutor or co-prosecutor; but in the *western provinces* the prosecution must be in the name of government alone. C. O. No. 85 *L. P.* and No. 88 *W. P.* of vol. 4.

See the next section.

If regulation requiring commitment is previous to extension of magistrate's powers.

988. If the regulation requiring the commitment of a prisoner for a certain offence was passed antecedently to the extension of the magistrate's powers by sect. 19, Reg. IX. 1807; and if the magistrate deems the punishment, which he is thereby authorized to adjudge, to be adequate to the offence; he is competent to dispose finally of the case without commitment. Const. No. 206.

Date of the crime charged.

989. When the death of a person is the result of, but occurs at a period subsequent to, an assault, the murder or homicide must be charged as having occurred on the day of the man's death, and not on the date of the assault. Reports *W. P.* 1856, part 1, page 274. It is most correct to insert both dates in the charge.

In cases of wounding, to wait for result;

990. In cases of wounding, the commitment should not be made until the result of the wounds has been put beyond doubt, either by the recovery from danger, or by the death of the wounded person. Const. No. 558.

and when commitment unnecessary.

991. In cases of assault or affray attended with wounding, neither the mere circumstance of a bone-fracture, nor the nature of the instrument of offence, necessarily takes the case out of the cognizance of the magistrate, it being left to him to commit or punish as he judges most expedient, with reference to the extent of the injury, the apparent intent of the aggressor, and other considerations of a similar nature. C. O. Nos. 53, and 102 of vol. 3.

In cases of theft, the prosecutor's statement is sufficient to determine whether the case is committable. But not if the amount stolen is the sole reason for commitment.

992. In cases of theft, the declaration of the prosecutor on oath as to the value of the property taken must be considered sufficient to determine in the first instance the tribunal by which the case should be tried; provided there is no reason to impugn the truth of it, on which point the magistrate is competent to make such enquiries as he thinks proper, and to proceed accordingly. Const. No. 1030. But in a case where the alleged value of the stolen property is the only reason for commitment, the magistrate is to put on record such proof as may show reasonable probability, that the loss sustained by the prosecutor really amounts to the sum specified and charged in the indictment. C. O. No. 8, Sept. 12, 1854. *L. P.*

Previous conviction of heinous offence in burglary or theft.

993. It is imperative on the magistrate to commit for burglary (under sect. 2, Reg. XII. 1818), a person previously convicted of cattle stealing; but he is competent to punish (under

sect. 3 of that regulation) a prisoner convicted of cattle stealing who has been previously convicted of the same offence. Const. No. 1273. The chapters and sections of subsequent books, which treat of particular offences, contain the rules in each case under which commitment is sometimes necessary and is sometimes left to the discretion of the magistrate. Where no such specific rules have been laid down, commitment is requisite only in those cases, for which the law has enacted a measure of punishment beyond the general powers of a magistrate. But he is at liberty to commit any case, in which he considers that the prisoner is deserving of a more severe punishment, than that which he has power to inflict.

General rule regarding the necessity or otherwise of commitment.

994. A conviction^{*} cannot be had on a general charge of robbery. The indictment, must contain a distinct substantive offence, and without such specification it cannot be sustained. Thus a person cannot be committed on a charge of bad character. *N. A. R.* vol. 6, page 76. Reports *L. P.* 1851, page 1472. So no conviction can be had on a charge of fraud, or of oppression, without specification, simply because it is impossible for a prisoner to plead to, or make any defence against, so vague an accusation. Reports *L. P.* 1852, part 2, pages 449 and 603. And it is not sufficient to charge forgery, without specifying the particular documents on which the charge is laid. Reports *L. P.* 1855, part 2, page 8.

The charge in the indictment must contain a distinct and substantive offence:

and the acts on which the charge is laid, must be distinctly specified.

995. On the same principle, where death has been caused by drugs administered with a view to procure abortion, the charge should contain a distinct averment of culpable homicide. Reports *W. P.* 1854, part 2, page 262.

The offence must be charged as well as the act from which it results.

996. A charge of "concealing the circumstances of the murder by sinking the body of the deceased in the river," was held to be incorrectly and insufficiently drawn. It should have been distinctly either for accessoryship in the murder after the fact or for privy. *N. A. R.* vol. 6, pages 141 and 346. So, a charge should be of culpable homicide and not of manslaughter, as the latter term is unknown in Indian law. Reports *L. P.* 1853, part 1, page 862.

Charge should be distinctly laid in proper legal phrase.

997. Where A committed an assault upon B; and B, having gone to complain, was on his return waylaid by C and D, and died from the effects of this second beating; and the magistrate committed C and D for culpable homicide, and A for assault; the court held that A should not have been committed with the others, as the acts were distinct. The charge of mere assault was punishable by the magistrate only; and could not, after the death of B from the effects of separate and subsequent violence by the two other prisoners, be prosecuted against A by B's heirs. Reports *L. P.* 1852, part 1, page 513.

Separate acts, though against the same person, should not be joined together in one commitment.

998. As forgery and the uttering of forged deeds are not cognate crimes with conspiracy, the latter offence should not form a count with the two former in the same calendar. Reports *L. P.* 1851, page 1666.

All charges embraced in one commitment should be of cognate crimes.

999. A prisoner under commitment on a charge of wilful murder effected his escape. His commitment (on re-apprehension) on an additional charge of escaping from jail whilst awaiting his trial at the sessions, which was an act not arising out of the same circumstances as the original count, and one in which commitment was not necessary, was annulled. *N. A. R.* vol. 6, page 75.

Additional count for escape from ha-jut cannot be added to charge for original offence.

If the crime involves two acts, one of which is in aggravation of the other.

1000. When the crime of the prisoner involves acts, the one of which is in aggravation of the other, as where he has committed murder in prosecution of theft, they should not be divided into separate counts; but should be charged together in one count. Reports *W. P.* 1854, part 1, page 3. And both must be distinctly averred in the charge. *N. A. R.* vol. 6, page 138. The safest course is to add a separate count for each act on which the charge is laid; as *e. g.* one for the theft with murder, a second for the murder, and a third for the theft. See Rule 19 of magistrate's statements, in appendix E.

When a person committed to the sessions is also proved guilty before the magistrate of a separate and distinct offence within his competence, he may either punish or commit in the *Lower Provinces*; in the *Western Provinces* he must commit.

1001. Where a magistrate convicted and sentenced a person whose trial in another case was still pending before the sessions court, the *nizamut adawlut* held that there was nothing illegal in such sentence, as the charge on which the prisoner had been committed to the sessions was not identical with, or related to, the same act as the charges on which he was punished by the magistrate; although the latter might, in his discretion, have committed him to take his trial at the sessions on all the charges against him. Letter of *N. A.* to Judge of *Rajshahye*, No. 888, August 2, 1853. But it seems that in the *Western Provinces* there is a different practice; and that a magistrate is there interdicted from passing sentence on persons who are under commitment to the sessions for a separate offence. Each separate offence must be made the subject of a separate trial, but all the trials must be held before the same court. Reports *W. P.* 1852, part 1, page 521.

But if two charges against one person originated in the same transaction, he should be committed on both.

1002. When a magistrate, holding an investigation on a charge of embezzlement, saw that it likewise involved one of forgery, the court held that, instead of at once disposing of the charge of embezzlement with which he was competent to deal, he should either have suspended his proceedings in the case and committed the accused upon the charge of forgery to the sessions court and awaited the result of that trial; or he should have adopted the more preferable course of committing the prisoner for trial on the two charges of forgery and embezzlement before the session judge, so that one tribunal might pronounce upon both. Letter of *N. A.* to Judge of 24-Pergunnahs, No. 378, April 14, 1853.

Witnesses for the defence of a prisoner before a magistrate may be committed for perjury, although the appeal preferred by the person convicted by the magistrate in the original case, be still pending.

1003. A commitment for perjury is not illegal, though made pending an appeal from the conviction which followed on a disbelief of the evidence of those witnesses who have, in the opinion of the magistrate, been guilty of perjury. With a view however to avoid conflicting decisions, it is advisable to postpone the trial for perjury until the appealed case has been disposed of, as the question of the innocence or guilt of the prisoners in regard to the alleged perjury must rest on the truth or falsehood of the original charge. Letter of *N. A.* to Judge of *Rajshahye* No. 641, June 11, 1853. *N. A. R.* vol. 1, page 263.

If one of those implicated is committed, all must be.

1004. When the commitment of one of the prisoners is requisite under the regulations, all the other prisoners implicated in the same offence must likewise be committed, although the case as regards them is cognizable by the magistrate. Const. Nos. 379, and 622. *N. A. R.* vol. 2, page 396.

If prisoners, who might be sentenced by the magistrate, are committed because others implicated in the same case must be com-

1005. When a prisoner is committed, because the commitment of another prisoner implicated in the same offence is requisite under the regulations, the circumstance necessitating commitment must be noted in the *roobakaree* of commitment; and the session judge should be careful that it is so recorded, because, when but for the commitment of his accomplices the

magistrate would have sentenced a prisoner, the judge should refrain from awarding to him a greater measure of punishment than the magistrate has authority to impose for offences of the kind. The judge also must himself show in his remarks under what circumstances the sentence recorded has been adjudged. C. O. No. 234 of vol. 3. *L. P.*

mitted, the reason must be noted by the magistrate and the judge.

1006. Great care is requisite in drawing up the charges on which prisoners are committed, because a prisoner cannot be convicted of any crime, to the distinct averment of which he has not pleaded, although the facts proved on trial be sufficient to establish a charge of that nature. See paras. 1214 *et seq.*

Prisoner cannot be convicted of a crime, to a charge of which he has not pleaded.

1007. Where there is any doubt as to whether the accused is guilty of a higher or lower grade of an offence of the same character, the commitment should be made for the higher grade; thus, if it be doubtful, from the evidence before a magistrate, whether the offence amounts to murder, or only to culpable homicide, the commitment should be for murder: and the reason of this is that a conviction of a minor offence may be had on a commitment for a graver offence of the same character, and founded on the same facts: but that the converse of the proposition does not hold good. On the other hand where a doubt exists as to whether a commitment should be made for knowingly receiving plundered property, or for the actual robbery, the prisoner should be committed on both counts; because here the acts are distinct and of a separate character. C. O. No. 54 of vol. 2, paras. 16, and 17. N. A. R. vol. 1, page 257; and vol. 3, page 56. And in all cases wherein stolen or plundered property has been found in the possession of prisoners committed for theft or robbery, a second count should be inserted in the commitment, charging them also with the offence of knowingly receiving the plundered or stolen property, as the case may be. C. O. No. 98 of vol. 2.

Charge to be laid for the higher rather than the lower offence, if doubt as to grade of criminality;

but on separate counts, if offences are distinct.

1008. But the commitment should not be made for the greater when there is proof of the lesser crime only. Letter of N. A. to Judge of Rajshahye, No. 2, February 10, 1840.

Not to be made for greater if proof of lesser crime only.

1009. It is superfluous to insert separate counts, the one charging the prisoners with being accomplices, and the other with aiding and abetting, as the meaning of both is the same. N. A. R. vol. 6, page 320. So, when a prisoner is charged as a principal, it is superfluous to charge him also as an accomplice, because accompliceship is comprehended in the principal charge. C. O. No. 109 *L. P.* and No. 110 *W. P.* of vol. 4.

Superfluous to charge prisoners as accomplices, and as aiding and abetting; or as principals and accomplices.

1010. But when a prisoner is committed as a principal or an accomplice only, he cannot be convicted of being an accessory before or after the fact, because accessoryship is a crime of a distinct and specific character. In such case the judge should return the calendar for amendment; but if he acquits the prisoner on that account alone, the magistrate may re-commit him as an accessory. Reports *L. P.* 1853, part 2, page 25. Reports *W. P.* 1856, part 1, page 393. This over-rules what is laid down in Const. No. 123, and N. A. R. vol. 1, page 247, regarding accessaries.

But the charge of being accessory must be separate.

1011. So also, a prisoner cannot be convicted as an accomplice on a charge of being an accessory before the fact; nor can he be convicted of being an accessory before the fact on evidence, which shows him to have been guilty, not of that offence, but of an offence of a higher grade and a different character. Reports *W. P.* 1855, part 2, page 363. A conviction

And a charge of privy must be also distinct.
 tion as an accomplice or an accessory cannot be had on a charge of privy. Reports *W. P.* 1856, part 1, page 293.

Two offences of distinct character cannot be charged in one count.

1012. On the same principle, averments of forgery and of uttering forged documents should be charged in separate counts, as the one offence is of a character distinct from that of the other. Reports *L. P.* 1855, part 2, page 8.

Magistrate cannot punish the accessory and commit the principal;

1013. The magistrate cannot punish the accessory and commit the principal; in all possible cases they should be tried together, if it be only lest the accessory be punished, and the principal acquitted. *N. A. R.* vol. 2, page 220.

even an accessory after the fact.

1014. When five persons rescued one accused of an attempt at murder from those who had seized him in the act, and the magistrate committed him for the attempt at murder, and punished the rescuers for a simple assault; the court held that the proceedings were exceedingly irregular, and that the rescuers should have been committed as accessories after the fact to the attempt at murder. Reports *L. P.* 1851, page 803.

If the principal has not been apprehended, magistrate may convict of privy,

1015. Both courts of nizamat adawlut have ruled, that magistrates are competent to try parties charged with privy to murder, or privy to other offences beyond their cognizance, and to punish the said parties as for a misdemeanor, provided that the principals accused of the murder or other offence have not been apprehended. But if a party so charged with privy be apprehended along with those accused of the principal offence, the magistrate must commit him to the sessions court, that there may be one trial by that court of all charges connected with the same offence. *C. O. No. 32* of vol. 4, *W. P.* It appears, however, doubtful whether this rule is in force in the *Lower Provinces*. See Reports *L. P.* 1854, part 2, page 608; and 1855, part 2, page 529; the former of which seems to deny, while the latter confirms the rule.

not otherwise.

Examples of irregular commitment.

1016. In a case of theft, attended with murder, the magistrate committed one of the persons concerned on the simple charge of theft, absolving him from the charge of participating in the murder; and in another case of theft, attended with burglary, committed on the same night, in which the same individual was concerned, he made no commitment, but discharged the prosecutor and witnesses, and appended his proceedings to the former case. The court deeming these proceedings irregular, quashed them, and directed that the prisoner should be committed on the whole of the first and also on the second charge. *N. A. R.* vol. 2, page 457.

1017. A magistrate is not competent to commit a wife for adultery, when no such charge has been preferred against her by her husband. *N. A. R.* vol. 3, pages 177, and 298.

Authority for deviating from usual course to be noted.

1018. Whenever it is deemed expedient that a prisoner committed at one station should be brought to trial at another, the authority of government, or the nizamat adawlut must be obtained in the first instance under the provisions of sect. 3, Reg. VIII. 1822*; and the want of such previous sanction vitiates the whole of the proceedings. Whenever authority for deviating from the usual course has been obtained, it is to be certified on the record of the proceedings. *C. O. No. 323* of vol. 1.

* *v. § 208 et seq.*

1019. In cases committed to the sessions, the roobakaree of the magistrate containing the order of commitment is to be drawn up in a prescribed tabular statement, for which see Appendix C. No. 3. C. O. No. 14, February 9, 1855. *L. P. C. O. No. 789*, June 16, 1855. *W. P.*

Final roobakaree, and calendar.

Charge to be recorded precisely.

1020. Magistrates are carefully to record in this roobakaree the precise charge on which they commit the prisoner; and such charge is to be entered in English and the vernacular on a separate paper annexed to the roobakaree, bearing the magistrate's official signature at full length, and the date of commitment. The magistrate is to take especial care that the proper vernacular word is used to designate the offence charged; thus, in a charge of murder, the term used should be "*kull-umd*;" and in a charge of culpable homicide "*kutl-shibeh umd*." C. O. No. 54 of vol. 2, paras. 15 and 16.

Care to be taken that the vernacular term is correct.

1021. The separate paper containing the charges in English and the vernacular, prescribed in the above rule, is to be drawn up and signed by the civil judge, when he makes a commitment for perjury brought to light in the course of any civil proceeding. C. O. No. 4 of vol. 4.

When a civil judge commits for perjury, he is to draw up and sign the separate paper of charges.

1022. If a commitment is made under special instructions of the commissioner of circuit, either of his own authority as in cases of perjury, or in modification of the original order of commitment by the magistrate; or in cases of perjury by order of a civil judge, or other authority empowered to commit in such cases; the same is to be noted in the proceedings. C. O. No. 54 of vol. 2, para. 18.

If commitment is made under special instructions.

1023. In cases of theft, burglary, or receipt of stolen property, the magistrate is to make a point of recording, in his roobakaree of commitment, the express circumstance or circumstances of aggravation, which have led him to commit the case, instead of disposing of it himself under Reg. XII. 1818. C. O. No. 239 of vol. 1.

In cases of theft, &c., circumstances of aggravation to be recorded.

1024. When a magistrate has occasion to commit for trial a person, who has been formerly apprehended, he is to attach to his proceedings a report from his principal native officer, countersigned by himself, stating concisely the date and ground of the former apprehension, and the issue of the case. The adoption of this measure may be attended with benefit to the prisoner, by showing his former innocence; or it may be useful to the session judge, in some cases, by enabling him more readily to determine on the propriety or otherwise of requiring from the prisoner security for his future good behaviour. C. O. No. 203 of vol. 1.

If the prisoner has been previously apprehended on a former charge.

1025. If the magistrate commits any zumeendar, independent talookdar, or other actual proprietor of land, he is to notify the commitment to the collector, that, if necessary, he may take measures to prevent any delay in the payment of the public revenue assessed upon the lands of the offender. *Beng. Reg. IX. 1793. sect. 18. Cal. Prov. Reg. VI. 1803, sect. 18.* The requirement of this rule is rendered unnecessary by the provisions of the sale law, Act I. 1845.

If a landholder is committed.

1026. Magistrates and session judges are to keep separate, as far as possible, the trials of prisoners upon distinct charges, especially where the prosecutors are also distinct. C. O. No. 2 of vol. 1.

Proceedings on distinct charges.

1027. The calendar is to be accompanied with the magistrate's proceedings on each charge, which are to contain the following vouchers, or as many of them as from the nature

What documents are to be submitted to the sessions with the calendar.

and circumstances of the case are requisite and procurable, and with such other documents as the magistrate may have in his possession, or judge necessary to be obtained for the information of the sessions court.

An attested copy of the complaint or charge.

An attested copy of the plaintiff's oath to the truth of the charge, in which is to be inserted, in case of robbery and theft, the inventory of the money or property stolen or plundered, with the amount or computed value of it. The prosecutor's recognizance to appear and prosecute the charge.

A copy of the warrant for the apprehension of the offenders, or, in case the charge has been preferred in the first instance to the police, a copy of the proceedings of the police.

The name or names of the person or persons apprehended.

The examination of the person or persons apprehended.

The further examination of the prosecutor on oath in cases where any such examination has been taken.

A list of the witnesses summoned by desire of the prosecutor, particularizing the names of such as may be in attendance, and those who are absent, with the cause of the non-attendance of the latter.

The recognizances of the prosecutor's witnesses.

The depositions of the witnesses who have been in attendance.

The names of the witnesses who have been summoned at the requisition of the prisoner, specifying those who are in attendance, and such as are absent, and the cause of the non-attendance of the latter.*

* See para. 1196.

Beng. Reg. IX. 1793, sect. 14. Ced. Prov. Reg. VI. 1803, sect. 14.

The circumstances first inducing suspicion against the prisoners are to be noted in the calendar;

1028. As a knowledge of the grounds which have led to the apprehension of the prisoners, is in many cases essential to enable the court to come to a correct conclusion as to the guilt or innocence of the accused, magistrates and other committing officers are to state in the calendar the circumstances which first induced suspicion to attach to the prisoners, and ultimately caused their apprehension on the charge of committing the offence for which they have been put on their trial. C. O. No. 14 of vol. 4. *L. P.*

by the magistrate who is to draw up the summary himself.

† Examples are given in the C. O. quoted.

1029. The magistrate is not to assign this duty to the clerk charged with preparing the calendar by means of a translation of the purport of the Oordoo proceeding of commitment; but is himself to write down a summary of the grounds upon which a case is committed (for exhibition in the calendar) at the same time that he passes the order of commitment to the sessions court.† C. O. No. 1047, August 10, 1854; *W. P.* and No. 10, November 17, 1854. *L. P.*

List of written documents adduced in evidence to be recorded in calendar.

1030. In cases of forgery, embezzlement, and the like, an accurate list of all the written documents to be produced before the sessions court, as evidence for or against the prisoner, is to be recorded in the calendar of commitment, and submitted to the session judge. C. O. No. 211 of vol. 2. C. O. No. 52 of vol. 4.

1031. When individuals are brought to trial for offences committed out of the limits of the British provinces, a copy of the letter of the magistrate, applying for the authority of government to hold such trial,* as well as the letter of government conveying such authority, is to be filed with the proceedings. C. O. No. 4 of vol. 2.

Document to be adduced in case of trial for offence committed in a foreign territory.

* *r. paras*: 215 and 245.

1032. Whenever a magistrate commits a prisoner for trial, he is immediately to intimate the same to the session judge, that no unnecessary delay may occur, in a prescribed form;† and the judge, in reply, is to intimate, in prescribed form,‡ the day on which he may be able to take up the case. C. O. Nos. 109, and 234½ of vol. 2.

Immediate intimation of commitment to be given to judge by letter; and reply.

† *r. Appendix C*, No. 8.

1033. A roobakaree, containing the same information, should be written and despatched as soon as the commitment has been made, and should specify the precise charge on which the prisoner or prisoners have been committed, and direct the mohafiz to enter the commitment, under its proper heading, mentioning the number that the offence bears in the statement and an abstract of the grounds of commitment. The final roobakaree containing the grounds of the commitment can be drawn out afterwards, though it should be the main object with every magistrate to forward the calendar and his proceedings to the session judge as soon as the attendance of the parties and witnesses can be procured, in order that the trial may be proceeded upon with as little delay as possible. C. O. *W. P.* No. 185, para. 2.; and *L. P.* No. 190, para. 8; of vol. 2. Rules for preparation of magistrate's statements, in Appendix E, No. 22.

The same intimation to be given by roobakaree, and directions as to the class of crime.

Delay in forwarding the case to be avoided.

1034. A case is to be considered pending before the session judge from the date on which the parties reach his court, whether such date be that fixed by him, or one posterior. C. O. No. 71 of vol. 3.

When the responsibility of the sessions judge commences.

1035. All prisoners committed by a magistrate, in any one month, are to be numbered by that officer in his calendar of commitments in one continuous series, commencing and terminating with the month, the last serial number indicating the number of persons committed during that period. In districts where there are two or more officers, vested with the full powers of magistrate, the magistrate of the district is to number in one series the whole of the prisoners committed by himself and his subordinates in any one month; and to enable him to do so, he is to require the officers, who have the power of making commitments, to furnish him with a report of the number of commitments made by each and the number of prisoners in each case. Rules for preparation of judge's statements in Appendix D, No. 57. C. O. No. 109 of vol. 2.

Prisoners committed to be numbered in a new numerical series for each month.

1036. In preparing the calendar (in accordance with the form given in sect. 13, Reg. IX 1793 *for Beng.* and sect. 13, Reg. VI 1803 *for Ced. Prov.*) (a) the prosecutor's witnesses are to be classed under three subordinate heads, or as many of them as are applicable in each case; viz. 1st, witnesses to the charge; 2nd, witnesses to confessions; 3rd, witnesses to character. So also the witnesses on the part of the prisoner are to be classed under two heads; viz. 1st, witnesses to the defence; and 2nd, witnesses to character. And the magistrate should

Classification of witnesses in calendar.

(a) These sections, as well as all parts of regulations proscribing forms of periodical statements, &c. have been rescinded by sect. 2, Reg. VII. 1829; and by clause 1, section 3, the sudder court was directed to prescribe all such forms, and to fix the periods of their transmission. But it was ordered at the same time that all forms previously prescribed by the regulations should remain in force, until the sudder court should alter or direct the discontinuance of them.

* For form of calendar v. Appendix, No. 9.

also adopt any other subordinate head, which appears useful or necessary.* C. O. No. 170 of vol. 1; and appendix to C. O. No. 54 of vol. 2.

Evidence how to be classified in the calendar.

1037. The magistrate in the calendar of commitment, under the column of circumstantial evidence, is to classify the witnesses according to the nature of their evidence; indicating by a heading in red ink, the particular subject matter to which the witnesses are expected to testify. It is impossible to lay down rules to meet every case, but the specimen given in the note(a) sufficiently shows the nature of the classification required. C. O. No. 111 of vol. 4. *L. P.* C. O. No. 1016, July 8, 1856. *W. P.*

Comparative statement of evidence to be furnished with the calendar.

* See Appendix C. No. 9½.

1038. In addition to the calendar and other documents, now sent to a session judge on a commitment, the magistrate, whenever more than one prisoner is included in the calendar, is to prepare a statement in the tabular form A* filling up carefully such of the columns as may be necessary in the particular case from the evidence taken before himself and the police. The session judge, who tries the case, is to fill up the third comparative column from the evidence given before him, and in all cases either referred or appealed to or called for by the court this statement is to form part of the nuthee. In cases of murder, affray, or other charges, it is competent to the magistrate to change the headings of cols. 10 and 11, as occasion may require, to the identification and finding of the lethal weapon, or any other article tending to establish the facts alleged. All officers are desired particularly to observe the manner in which the accompanying form* has been filled up and to enter the figures and names in red ink as well as black ink according to this specimen. C. O. No. 111 of vol. 4; and No. 5, May 26, 1854. *L. P.* C. O. No. 1016, July 8, 1856. *W. P.*

1039. In order to facilitate reference and to expedite the completion of a trial, great care should be taken to exhibit at one view in the calendar the property *numbered*, and the names of the witnesses before whom the said property was produced from the houses or possession of each prisoner. Possession of property of the same description, if not numbered, cannot be proved against the person charged with possession. Reports *L. P.* 1852, part 2, page 347.

Circuit.

Proclamation of date on which judge will take up the case.

1040. Upon receiving notice from the judge of the day on which he intends to take up the case, the magistrate is to cause public notice of it to be given by a written publication, requiring all persons discharged upon bail, and all prosecutors and witnesses who have been bound over to appear, to attend on the day fixed, under the penalty of forfeiting their recognizances.(b) Reg. IX. 1793, sect. 11.

(a) Circumstantial Evidence.

Exd.

Witnesses who heard a noise, and on going to plaintiff's house found him lying wounded,

5. Ram Das.

6. Joynarrain.

Exd.

Witnesses who saw prisoners 2, 3, 4, near the village on the evening previous to the dacoity,

7. Pitumber Sein.

8. Issur Chuander.

9. Bhurat Naik.

N. B. The words in *Italics* and figures should be inserted in red ink.

(b) This section was enacted with reference to the periodical arrival of the court of circuit: and a copy of the abovementioned publication was directed to be published in each pergunnah of the district. The provision may still apply to joint-magistrates, at whose stations quarterly sessions are held.

1041. Prisoners committed by a magistrate after the arrival of the session judge on circuit at his station, are always to be tried at the sessions then pending, provided that no material delay occurs in procuring the attendance of the witnesses, or in other preparations for the trial. But in order to prevent the indefinite detention of the judge by the trial of such commitments, magistrates are restricted to one supplementary calendar, including persons committed or held to bail for trial before the sessions court during the session of the court for the trial of the prisoners named in the original calendar. C. O. Nos. 9, 49, and 77 of vol. 1.

Commitments made by magistrate after the arrival of session judge on circuit.

1042. In the case of an officer being vested with magisterial powers, and deputed permanently or temporarily to exercise them within a portion of a district, or of an officer's being placed in charge of a tract of country comprising portions of several jurisdictions, it is competent to government, at the time of creating such an authority, or at any time subsequently, to determine and prescribe, by an order under the official signature of a secretary to government, at what station and in what manner prisoners committed to take their trial before the court of circuit, for offences perpetrated within the limits assigned to such officer, are to be brought to trial for the same. Notice of every such determination is to be given to the nizamat adawlut, and that court is to take the necessary steps to carry the same into execution. Reg. VIII. 1822, sect. 6.

Commitments made at subordinate station.

In the case of a newly created magistracy or joint-magistracy government is to decide where and how the sessions are to be held.

1043. The jail deliveries are ordinarily to be held at the station of the magistrate or joint-magistrate making the commitments: but it is competent to government, and the nizamat adawlut with the authority of government, to direct the sessions for any district, which is under the authority of a joint-magistrate, to be held at the sudder station of any of the zillahs in which the thanas, constituting the jurisdiction of such officer, or any of them, may be situated, provided that such station is within the division of the commissioner to whom the joint-magistrate is subordinate. Reg. I. 1829, sect. 3, cl. 3.

Government may direct the sessions for any joint magistracy to be held at any station within the same division.

1044. This is explained to mean that it is competent to government to direct the sessions for any joint-magistracy to be held generally at any station within the jurisdiction of the commissioner of circuit to whom the joint-magistrate is subordinate, so long as the orders to that effect remain unrescinded. Reg. II. 1831, sect. 4.

1045. When a magistrate or joint magistrate, having jurisdiction limited to the district of a session judge, or extending to other districts, is stationed at any place within the jurisdiction of the judge, all cases committed to the sessions by such magistrate or joint-magistrate, are to be submitted to the judge through the magistrate at the sudder station as soon after commitment as practicable; and the judge is authorized and required to try all such cases under the same rules, as if committed by the magistrate of the sudder station. (a) Reg. VII. 1831, sect. 12, cl. 1.

Such commitments to be for trial to the sudder station.

(a) This rule, however, is obsolete in practice, except as regards the districts of Howrah and Baraset. For, by the orders of the Bengal Government, No. 220, dated February 6th, 1843, and passed apparently under the authority of the provisions of the preceding paragraphs, quarterly sessions are held at the stations of certain independent joint magistrates, where session judges are not permanently stationed; viz. Noacolly, Furreedpore, Chumparun, Bograh, Maldah, and Pubna. The nizamat adawlut was directed to fix the times of such sessions, only taking care that not less than three months should occur between each. Under a similar rule (I presume) the judge of Bhaugulpore holds quarterly sessions at Monghyr. The commitments of Howrah and Baraset are tried at Alipore by the judge of the 24-Pergunnahs.

1046. Prisoners committed by joint-magistrates not residing at the sudder station should be forwarded to the sudder station, and brought to trial at the regular sessions of the district, in like manner with prisoners included in the commitments by the magistrate.(a) Const. No. 135.

Disposal of proceedings and prisoners in such cases. Information of the sentences to be sent to the joint magistrates.

1047. In such cases, the proceedings on the commitments are to be returned to the office of the joint-magistrate, by whom they were committed, after the completion of the trials; and copies or abstracts of the sentences of all prisoners, whether convicted and sentenced to punishment, or acquitted and discharged, are also to be sent to him. If the prisoners are sentenced to a period short of perpetual imprisonment, and if banishment form no part of the sentence, they are to be sent to be imprisoned at the station of the joint-magistrate, provided the jail of such station have room and accommodation for them without danger to their safe custody or health: where this is not the case the prisoners must, either all or some of them according to the necessity of the case, be confined in the jail of the magistrate's station. C. O. No. 288 of vol. 1.

But discretion vested in government in defining the jurisdiction of the judge.

1048. But, if on account of distance or other cause it is deemed expedient to limit the jurisdiction of the judge to cases originating within the limits of his own district, or to exclude from his jurisdiction all the commitments made by such magistrates or joint-magistrates and to transfer them for trial to the judge of another zillah, or to leave them to be decided by the commissioner of the division at the station of those magistrates or joint magistrates, it shall be competent to the government to direct the same. Reg. VII. 1831, sect. 12, cl. 2.

Commissioner of circuit, engaged in sessions, may fix the periods of holding such.

1049. It is also competent to any commissioner, to whom the session duties of the sudder station of any zillah, at which he may ordinarily reside, may be reserved, to require the magistrates or joint magistrates, stationed within the limits of that zillah, to forward all cases committed, at such periods as the commissioner may deem proper, for trial before himself at the sudder station. Reg. VII. 1831, sect. 13, cl. 1.

Prisoners.
When fetters may be imposed.

1050. As it is the evident intention of the regulations that no prisoner, before he is brought to trial, should suffer more corporal restraint or personal ignominy than may be unavoidable for his safe custody and appearance at the time of trial,—magistrates are not to confine in fetters any person left for trial before the sessions, who is charged with a bailable offence, and committed to prison from inability to find bail; or who, though not admitted to bail, is not charged with a heinous offence, such as from the nature and circumstances of the case, considered with the prisoner's condition of life, may appear to render the use of irons indispensably requisite for his secure custody. And even in regard to heinous offences, such measure of severity should never be resorted to, except in extreme cases, or where the prisoner is of a character so dangerous as to render the imposition of fetters absolutely necessary to his safe custody. C. O. Nos. 40, 206, and 210 of vol. 1, and No. 32 of vol. 2.

(a) This construction was superseded by the provisions of Reg. XVII. 1825, which prescribed special rules for holding the sessions at the stations of the joint-magistrates of Baraset, Balasore, Malda, Monghyr, and Shahjehanpore; but that regulation is rescinded by Reg. I. 1829; and cl. 1, sect. 12, Reg. VII. 1831, quoted above, re-enacts the rule. See "Index to the Constructions;" head Commitments, No. 2, page 22.

1051. A main object of Regulation VII. 1831, was to relieve parties and witnesses from the inconvenience of frequent journeys to and from sudder stations, and lengthened detention when there. A session judge should not, therefore, hold monthly sessions of jail delivery at stated periods; but should proceed upon each trial as soon as practicable after the commitment has been made by the magistrate. Circumstances may occur to prevent a judge from taking up the case immediately, but he is required to use his utmost endeavors to prevent unnecessary delay. C. O. No. 108 of vol. 2. See also sect. 4, Reg. VII. 1831.*

1052. On first taking up a case committed for trial, the judge should compare carefully the written charge, on which the prisoner is committed, with the facts of the case as stated in the magistrate's roobakaree of commitment; and, with reference to paras. 15, 16, 17, and 18 of C. O. No. 54 of vol. 2,* in this stage of the proceedings, he should cause the magistrate to rectify what may be erroneous, and supply what may have been omitted. He should cause the commitment to be amended, before proceeding to try the prisoner, C. O. Nos. 135, and 98 of vol. 2. Const. No. 857.

1053. It is the duty of the session judge, upon the inspection which he is required to make immediately on the receipt of a trial committed to his court, to apply a prompt correction to irregularities in the framing of criminal charges. Such irregularities are then easily remediable; but after reference to the nizamat adawlut, can be amended only by the inconvenient course of annulling the entire proceedings, where the defect may be so vitiatory as to demand the adoption of such a course. C. O. No. 1047, August 10, 1854. *W. P.*

1054. Should the session judge see reason to direct any alteration of the charge, on which a prisoner has been committed, he will distinctly state in his order to the magistrate the heading under which the case should be included in his statement No. 1, part 1; but he will postpone entering the case in his own statement No. 1, until he has heard from the magistrate, that he has carried the order into execution. C. O. No. 185 of vol. 2, para. 3. *W. P.* No. 190 of vol. 2, para. 9. *L. P.* No. 6 of judge's rules in Appendix D.

1055. When a person charged with a criminal offence has been committed, or held to bail, by a magistrate, to stand his trial before the sessions, it is not competent to the session judge to annul the magistrate's order, and to prevent the regular trial of the person so committed or held to bail. Reg. VI. 1818, sect. 3, cl. 2.

1056. But the nizamat adawlut, considering a commitment to have been made without due inquiry, annulled it, and directed the magistrate to make further enquiry, and recommit if he saw sufficient grounds. Const. No. 290.

1057. Under all circumstances a sentence of conviction or acquittal must be passed upon every person committed for trial. N. A. R. vol. 5, pages 145, and 173.

1058. But session judges are competent to cancel commitments. There is nothing either in the spirit or the terms of Act XXXI. 1841, which restricts them from directing the re-commitment of a prisoner upon a higher or different charge from that on which he is arraigned, if they consider that such a course is suitable to the facts proved by evidence in the case. The usual and by far the most frequent occasion, for the alteration of charges by a

Duty of session judge on receiving commitment.

Trial to be proceeded upon immediately after commitment.

* ¶ 1114.

Judge may direct the charge to be amended before trial;

* See paras. 1006, et seq.

and corrections may easily be made then, which, if allowed to pass, might afterwards involve the annulment of the entire proceedings.

In such cases the judge is to instruct the magistrate under what heading the case is to be included.

Judge cannot annul commitment so as to prevent trial;

but the nizamat annulled for want of inquiry.

Sentence must be passed on every prisoner.

Judge may cancel commitment, and order re-commitment on a higher or different charge;

session judge, will arise on his first taking up a case, and comparing the written charge with the facts stated in the roobakaree of commitment (as required in para. 1052). If however the alteration should be required to be made upon the facts of a case, as derived from the evidence taken and well established before the session judge, (this being a power to be exercised only on the plainest and strongest grounds) the proceedings in the trial should be at once stopped, and the case remanded to the magistrate with the necessary directions for a fresh commitment. C. O. No. 70 of vol. 4. *L. P.*

and may quash the commitment if the magistrate has power to dispose of the case, and assigns no special reason for committing the prisoner to the sessions. But he cannot cancel a commitment merely because he differs as to the tribunal before which the case should be tried and he should ask the magistrate for what reasons he made the commitment.

1059. Under Const. No. 782 a session judge may cancel the commitment in a case of which the magistrate has power to dispose.^(a) But in cases in which the magistrate is at liberty to exercise his discretion in bringing the accused to trial in the sessions court, the judge cannot cancel the commitment, merely because he differs in regard to the tribunal before which the case should be brought. In such cases however the special reasons which have induced the magistrate to commit, must be assigned, for otherwise the judge would be justified in cancelling the commitment. C. O. No. 70 of vol. 4. *L. P.* But it seems that, if the judge be of opinion that the case is within the competency of the magistrate, and no special reasons are assigned in the roobakaree of commitment, or shown on the proceedings, to justify the commitment, or to lead to the inference that the magistrate considers the punishment which he can award insufficient to the offence, the judge should call upon the magistrate to supply the omission; and should cancel the commitment only when it appears that the commitment was made through error or negligence. See Const. Nos. 301 and 391.

Judge cannot cancel a commitment for insufficiency of preliminary investigation, or for want of proof. In such case he should direct further enquiries,

1060. An apparent defectiveness in the preliminary investigation is not a sufficient reason for cancelling a commitment. If the evidence against the prisoner is insufficient for conviction, and the judge has reason to believe that further evidence might be had against him, he may direct such further evidence to be sought for and sent in, the prisoner remaining in the mean time under commitment. The conduct of the preliminary investigation is exclusively in the hands of the police officers, who are responsible for it only to the magistrate and the superintendent of police, and not to the judicial authorities; but the session judge should bring to the notice of the superintendent of police any irregularity or want of efficiency on the part of the police, which comes to his notice during a criminal trial. If it appears to the judge that the charge is not susceptible of further proof, he should pass sentence of acquittal. Const. Nos. 1030, and 1122. C. O. No. 70 of vol. 4. *L. P.* N. A. R. vol. 5, page 116. Reports *L. P.* 1852, part 1, page 1083.

or should acquit the prisoner.

Nor can the judge annul a commitment because he considers that the magistrate acted illegally in taking up the case.

1061. Where a judge cancelled a commitment, because it appeared that the magistrate and police acted illegally in taking up the case, the nizamat adawlut directed him to withdraw his order of annulment; to proceed to try the commitment in due course; and, on the conclusion of the trial, to refer the case for the orders of the court on any point of law in regard to which he might be in doubt. N. A. R. vol. 6, page 35.

The charge cannot be amended after the prisoners

1062. The session judge cannot remand a case to the magistrate with directions for a fresh commitment after the defence has, at the close of the evidence for the prosecution, been

(a) The power of cancelling a commitment in such cases does not include the power to cancel a conviction by a magistrate for an offence within his competence, and to direct a commitment. Reports *L. P.* 1856, part 1, page 873.

taken from the prisoner on the charge as laid against him by the magistrate. C. O. No. 70 of vol. 4. *L. P.* N. A. R. vol. 6, page 7.

have made their defence to the charge as first laid.

1063. Where the prisoners have been improperly committed for culpable homicide, and tried by the sessions court, the nizamat adawlut have quashed the proceedings, and directed a re-commitment for wilful murder. And in some such cases the prisoners have been sentenced to death. Reports *L. P.* 1852, part 2, pages 796 and 951.

The sudder court have quashed the whole proceedings after sessions trial on account of incorrect commitment.

1064. But, in a trial which was held to be illegal, and annulled, and the magistrate desired to re-commit in a legal manner, the court did not think proper to order the re-commitment of some of the prisoners, against whom there appeared to be no sufficient evidence; and who, had the trial been legal, would have been regularly acquitted and released. N. A. R. vol. 2, page 393.

If proceedings are quashed, acquitted prisoners need not be re-committed.

1065. Where a magistrate dismissed a complaint of rape against a defendant, and afterwards committed him on a charge of adultery, it was held that the session judge acted irregularly in cancelling the commitment and directing a fresh commitment for rape. (a) Reports *W. P.* 1855, part 2, page 494.

Example of irregularity in cancelling a commitment and ordering a fresh commitment on a different charge.

1066. Where a session judge misdirected the magistrate by quashing his commitment of burglary on the ground of the evidence amounting to embezzlement only, while, in fact, the crime was burglary, the sudder court held the whole of the proceedings in the sessions court on the charge of embezzlement to be void and quashed them. Reports *L. P.* 1851, page 869.

A misdirection on the part of the judge in cancelling a commitment makes his whole proceedings void.

1067. When the session judge remands a case to the magistrate for a fresh commitment, it is unnecessary to pass any orders regarding the accused. But where a judge under such circumstances issued warrants of acquittal in regard to prisoners committed on a charge of culpable homicide, it was held to be no bar to their subsequent commitment for, and conviction of, wilful murder on the same evidence. Reports *L. P.* 1854, part 2, page 587.

When a case is remanded for a fresh commitment, the prisoners need not be acquitted of the charge cancelled; but such acquittal does not prevent re-commitment.

1068. A report need not be made now to the sudder court, as was formerly requisite, when a commitment is cancelled by a session judge. The judges are to exercise their discretion on this point, as in other parts of their duties, on their own responsibility; though they may of course make any special report to the court, which, in particular instances, they think necessary for its information. C. O. No. 70 of vol. 4, *L. P.* and No. 76 of vol. 4, *W. P.*

No report is required to sudder court of the cancelling a charge.

1069. A formal razeenamah, or compromise, ought not to be admitted by a session judge, to bar the trial of any commitment made by a magistrate; both as there is no provision for such in the existing regulations; and as the practice of discharging the prisoner on acquittal, when evidence is not adduced for his conviction, and the ends of public justice do not require a postponement of the trial for further evidence, appears preferable to the admission of a compromise, which might perhaps leave the prisoner exposed to a future prosecution. C. O. No. 187 of vol. 1.

Judge cannot admit a formal compromise of a commitment.

1070. A session judge is not at liberty, in the case of a commitment made by a magistrate, to punish the prosecutor for a groundless and malicious complaint; as the very fact

Judge cannot punish for a groundless complaint in a commitment.

(a) It is not clear from the report of this case, whether the irregularity consisted in the direction for commitment on a charge, which the magistrate had dismissed, or in the tendency of the evidence adduced to prove the one charge instead of the other.

of the commitment having been made by the magistrate affords sufficient presumption that the complaint is not of that nature:—though he is competent to direct the commitment of the prosecutor, and his witnesses for perjury, in the event of his seeing reason to believe that a false accusation has been preferred on oath, and that an attempt has been made to substantiate it by false evidence. Const. Nos. 528, and 530.

SECTION XXI.

OF THE PUBLIC PROSECUTOR.

Government to be
prosecutor in all
heinous cases.

1071. Magistrates are required to make the government prosecutor or co-prosecutor in all heinous cases. C. O. No. 85 of vol. 4. *L. P.*

1072. The following rules are in force in the *Western Provinces* only. In all commitments for heinous offences, in which the course may be allowed by law, the magistrate is to direct the prosecution to be conducted on the part of government, and is to appoint either the government vakeel or any other respectable person to act as prosecutor. The trial is to be opened in the sessions court by the vakeel of government, or other persons selected as above, who is to read a petition from himself, containing the charge or charges upon which the prisoner has been committed, in the same words as have been used in the calendar and roobakaree of commitment. The aggrieved parties are to appear among the witnesses for the prosecution, and their evidence is to be taken in that character. C. O. No. 88 of vol. 4. *W. P.* Under this rule every prosecution must be on the part of government alone. Reports *W. P.* 1855, part 1, page 209.

Any person may
officiate as prosecu-
tor.

1073. The magistrate is at liberty to direct any person, whom he may think fit, to officiate as government pleader for conducting prosecutions on the part of government. Const. No. 600.

Magistrate may
direct public pro-
secution at his dis-
cretion.

1074. A magistrate is perfectly justified in exercising a discretion in appointing the government pleader to prosecute in cases of murder, notwithstanding that there may be near relations of the deceased competent to prosecute. Const. No. 778.

Even when the
injured party de-
clines.

1075. Where the injured party, in a case of theft, declines prosecuting, the magistrate may still, if he think fit on a view of the nature of the case, direct a public prosecution. Const. No. 318.

When there is no
private prosecutor,
the government
pleader should be
ordered to prose-
cute.

1076. In a case of murder and wounding, the law officers convicted the prisoner of the murder, but would not give a futwa on the charge of wounding, as no one had prosecuted upon that charge. The court observed that, to complete the proceedings on the trial, the magistrate or the sessions judge should have ordered the government pleader to prosecute, in the absence of the wounded persons. *N. A. R.* vol. 2, page 241.

1077. In a case of rape the only prosecutor appearing being the ravished girl, who was an infant, the proceedings were returned with instructions that the vakeel of government should be directed to prosecute. N. A. R. vol. 3, page 170.

So, when the prosecutor is an infant.

1078. There is no objection against employing the superintendent of police, or any other officer whom the government may appoint, not being the committing officer, to conduct a prosecution before the sessions court, provided he be recognized as the prosecutor, or agent of government for conducting the prosecution, and be not authorized to interfere in any other capacity in the trial. Const. No. 279.

Employment of superintendent of police, or other officer, to conduct.

1079. In cases of commitment made by the superintendent of police in his capacity of magistrate, he should not be employed to conduct the prosecution before the sessions court; though no objection would attach to the nomination of his assistant, or the assistant to the magistrate, to manage the prosecution in such cases. Const. No. 279.

Officer not to be so employed when he has himself made the commitment.

1080. In charges preferred and prosecutions conducted on the part of government, the vakeel of government, or other person acting as prosecutor for government, is not to be required to make oath, or subscribe a declaration to the truth of the charge, when preferring it to the magistrate, or stating it to the sessions court. *Ced. Prov. Reg. VIII. 1803*, sect. 25, cl. 5. *Beng. and Ben. Reg. L. 1803*, sect. 4.

Government prosecutor is not to be required to make oath to the truth of the charge.

1081. The court *L. P.* promulgated the following instructions, contained in a letter from government No. 446, dated May 22, 1851, for observance by the magistrates regarding the discretionary employment of pleaders on behalf of government in criminal trials, which may be thought especially to require it. "The employment of a government pleader in criminal trials in the sessions court, does not appear to be thought necessary by the sudder court, except in cases in which, under Act XXXVIII. 1850, pleaders may appear on the part of the prisoners. These cases may be expected to be few, and it will probably be only prisoners of some pecuniary means who are found to take advantage of the Act. But to prisoners of such means, the president in council doubts if it would be in the main safe to oppose such vakeels as could be retained for the very small salary of 15 rupees a month, and it may at all events hardly seem necessary to pay these vakeels all through the year for services which will perhaps be seldom called into action. Until, therefore, the extent of the operation of Act XXXVIII. 1850 is better known, the president in council is of opinion that it will be sufficient to empower the magistrates, under proper checks, to employ good pleaders on behalf of government in any particular cases which may be thought especially to require it, and to pay a suitable and sufficient fee on every such occasion for the service performed." All instances of pleaders being so employed, with the fee settled in each case, are, until further orders, to be reported by the magistrate through the session judge for the court's information. C. O. No. 68 of vol. 4. *L. P.*

Magistrates are empowered to employ pleaders on behalf of government, in any criminal trials, which may be thought especially to require it. *L. P.*

Such cases to be reported to the sudder court.

1082. The government *W. P.* has similarly empowered magistrates to employ, under proper check, good pleaders on behalf of government before the sessions courts, in any particular criminal cases, which may be thought especially to require it, and to pay a suitable and sufficient fee on every such occasion for the service performed. Such agency is mainly intended to be used in cases where the prisoners are defended by counsel. But if,

Similar rules laid down in *W. P.*

in any case, the magistrate thinks it advisable that a sessions trial should be so conducted, the duty should, under usual circumstances, be entrusted to the government vakeel, who will be entitled to such fitting remuneration, as may be recommended for the extra labor devolving on him. Any such charges are to be submitted by the magistrate in a monthly contingent bill to the sudder court through the session judge, who is to state his own opinion as to the necessity for the vakeel's services in the particular case, and the suitableness of the fee proposed to be granted to him. C. O. No. 142, February 7, 1854. *W. P.*

Rules regarding the appearance of the government advocate or his deputies in court.

In all appealed or referred cases government advocate may appear:

whether the prisoner has, or has not employed counsel.

Pleaders for prisoner in appealed cases to give notice of pleas of fact and of law.

Government advocate to give notice if he intend to appear when prisoner has not employed counsel.

Court may call for appearance and may employ counsel for prisoner.

1083. The following rules are promulgated regarding the appearance of the superintendent and remembrancer of legal affairs as government advocate in the nizamat adawlut.

Rule 1. In appealed or referred cases, the government advocate shall be competent to appear, and he shall ordinarily appear by himself, or, at his discretion, either by the senior or junior government pleader on behalf of the government, in all cases in which government has been the prosecutor, and in which a pleader is employed for the prisoner. And it shall be further competent to him to make appearance, in like manner, in any appealed or referred case, instituted on the prosecution of government, in which, although no pleader may have been engaged for a prisoner, it may seem to him, acting in communication with the superintendent of police, or directly with the magistrates, when there may not be time for a reference to the superintendent of police, important that there should be an appearance by a pleader on behalf of the government.

Rule 2. Pleaders, appearing for a prisoner in *appealed cases*, shall be bound to give in to the register's office, at a time not less than one week before the date fixed by the court for the public hearing of the appeal, a note, under distinct heads, of the pleas of fact and of law on which he rests his appeal, and the register shall cause such note to be transferred to the senior government pleader. But it shall be competent to such pleader for the prisoner, on leave of the court, to put in, at the hearing of the appeal, any further pleas of law, which he may desire to argue. The register shall also intimate to the senior government pleader when a pleader may be appointed on behalf of a prisoner in a *referred case*.

Rule 3. The government advocate shall, through the senior government pleader, give immediate notice to the office of the register, when he may intend to appear in a case in which no pleader has been engaged for a prisoner, and the register shall thereupon intimate the same to the judge to whom the case has been submitted, and the judge shall fix such date as he may think suitable for the public hearing and decision of the case.

Rule 4. It shall also be competent to the court to call for the appearance of the government advocate, either by himself, or by the government pleaders, as he may determine, in any case in which, from its special character, they may consider that such an appearance would be manifestly conducive to the better administration of justice.

Rule 5. In cases whether referred or appealed, in which there may be an appearance for the government, as above provided, without the previous employment of a pleader on behalf of the prisoners, charged or convicted, the court shall be competent to nominate a pleader to appear on behalf of the prisoner, and to assign to him such remuneration as it

may deem suitable, not exceeding rupees 200 in any case; such amount to be paid on a contingent bill, under the countersignature of the register of the court.

Rule 6. The superintendent of police shall give such directions to the magistrates, as he may deem necessary, in order to their apprizing the government advocate of the cases, whether referred or appealed, in which it may be thought by them of importance, that there should be an appearance before the nizamat adawlut on behalf of the government; and he will also, in the discretion which belongs to his office, communicate directly with the government advocate regarding such cases as he may see fit.

Rules regarding the relation of the government advocate to the superintendent of police and the magistrate.

Rule 7. The government advocate shall, after any communication with the magistrates which he may find necessary, correspond with the superintendent of police, on the subject of any case in which, whether a pleader shall or shall not have been engaged on the part of a prisoner, it may appear to him inadvisable that he should make appearance in court, whether by himself or his deputies, on behalf of government. If after such correspondence with the superintendent of police, an appearance shall still appear inexpedient to the government advocate, he may, in his discretion, refrain from appearing; and the case shall then be left to be disposed of by the court upon consideration of the record, after hearing the pleader for the prisoner, in any case in which such pleader may have been employed.

Government advocate to correspond with superintendent of police.

and may refrain from appearing.

Rule 8. The government advocate shall have the power of calling for explanatory information from the magistrates in regard to any case in which under the preceding rules, it may become his duty to appear, or to consider the propriety of appearing in court. And he may also, where necessary, solicit information on any point of importance connected with the course and circumstances of a trial, from the session judges. C. O. No. 85 of vol. 4. L. P.

Government advocate may call upon magistrate for explanation.

1084. The government pleaders at the different sessions courts are instructed by the government advocate invariably to apprise the magistrate of the district, or the officer exercising magisterial powers at an outstation, when any case which has been committed to the sessions from their several stations has been referred by the judge to the sudder court, or having been decided by the judge may have been appealed to the sudder court either by the prisoners themselves in jail or by any party acting on their behalf in the sessions court. The government pleaders at the nizamat adawlut are also instructed in all cases to inform the superintendent of police, the magistrate of the district, or other officer exercising magisterial power, within whose jurisdiction the appealed cases have arisen, of all appeals filed in the sudder court, on notice of the appeal being given to them by the register of the court. Immediately on the receipt of either of the above communications the magistrate, or other officer exercising magisterial powers, is to address the government advocate *direct*, stating the circumstances of the case so referred or appealed, with his opinion as to the importance or otherwise of there being an appearance made before the nizamat adawlut on behalf of the government; and by the same dawk the magistrate or other officer exercising magisterial powers is to forward a copy of his letter to the government advocate to the superintendent of police. All magistrates and other officers exercising magisterial powers are to pay the greatest attention to the calls of the government advocate for information or papers connected with any cases referred or under appeal; and they will be held strictly responsible

for any delay in replying to such requisitions, or any neglect of the rules promulgated for their guidance. C. O. Sup. Pol. *L. P.* No. 5 of 1852.

Form of notice to be given by the judge to government pleader.

1085. In order that government pleaders may invariably be enabled to act in the mode prescribed by the foregoing rules, the session judge is to issue a notice to the government pleader, in the annexed form, of all cases referred or appealed to the sudder court either by the prisoners themselves or by any parties acting on their behalf in the sessions court, immediately on his making such reference, or forwarding the record of trial on an appeal to the court.

Name of prosecutor and prisoners.	Date of conclusion of trial in the sessions court.	Date of letter of reference if the trial has been referred.	Date of presentation of petition of appeal in the event of an appeal, and date of transmission of appeal record.

C. O. No. 89 of vol. 4. *L. P.*

SECTION XXII.

OF MOKHTARS AND AGENTS.

1086. The name of the officer attesting powers of attorney is invariably to be signed in full. C. O. No. 63 of vol. 4.

For the prosecution.

Complaints may be preferred to the magistrate by an agent, in certain cases.

1087. The attendance and deposition of the complainant is not indispensable in preferring a criminal charge, when sufficient reason can be assigned for his non-attendance. If the complainant is unable to attend in person, or if he were not himself present at the commission of the act complained of, his written plaint, presented by an authorized agent, and corroborated by the deposition on oath, or solemn declaration, of one or more persons present, or otherwise personally informed of the truth of the complaint, is sufficient ground for receiving the same, and for issuing process against the party accused, unless the magistrate see reason for making previous inquiry. (See paras. 334, et seq.) Reg. IX. 1807, sect. 4.

But not unless substantial reason be shown for the absence of the prosecutor.

1088. But serious inconvenience having been experienced from the indiscriminate permission allowed to vakeels and agents to conduct such prosecutions under the above rule, it was enacted, that in ordinary cases, individuals having charges of a criminal nature to prefer, should attend in person to institute and conduct the prosecution before the magistrate, and likewise before the sessions court; and that such agents should not be permitted to interfere in the conduct of prosecutions, unless substantial reasons be shown (to be recorded of course in the proceedings of the magistrate) why the prosecutor himself should not attend to carry it on in person. It is the duty of the nizamat adawlut, and of the session judge, to restrain any ill-judged exercise of the discretion thus vested in the magistrate. Reg. III. 1812, sect. 3.

1089. On a trial before the sessions, the prosecutor is to be allowed the option of carrying on the prosecution in person, or by a vakeel duly appointed, excepting in cases in which the Mahomedan law requires the prosecutor to appear in person at the trial of the prisoner. This rule, however, is not meant to prohibit the judges causing prosecutors to attend in person in every case, in which their *viva voce* evidence is deemed necessary, provided they are not Mahomedan or Hindoo women of a rank and situation in life, which, according to the customs and prejudices of the country, would render it improper to compel them to appear in a court of justice. *Beng. Reg. IX. 1793, sect. 48. Ced. Prov. Reg. VII. 1803, sect. 16.*

So, before the sessions. But judge may require the attendance of the prosecutor.

1090. All courts, magistrates, and persons exercising the powers of a magistrate, subject to such rules as shall be from time to time made for their guidance by the nizamat adawlut, may allow any prosecution to be conducted by an authorized agent. But this is not to be deemed to dispense with the presence of any prosecutor when the presence of such prosecutor is now by law required. *Act XXXVIII. 1850, sects. 2 and 4.*

Prosecution may be conducted by mokhtar.

1091. Upon a complaint being preferred to a magistrate for any bailable crime or misdemeanor, he is empowered to issue a summons requiring the accused to appear, according to the circumstances of the case, in person or by vakeel to answer the charge. (See para. 346.) *Reg. IX. 1807, sect. 6, cl. 2.*

For the defence.

In bailable cases magistrate may allow the defendant the option of appearing by vakeel.

1092. A session judge may order a magistrate to admit a party to appear and answer by attorney, if he sees sufficient reason for so doing, without calling for the proceedings. *Const. No. 730.*

Judge may order magistrate to admit.

1093. A session judge is empowered to comply in the first instance with applications made to him by parties held to bail for trial at the sessions, to be allowed to attend and plead upon the trial by a vakeel duly constituted, instead of attending in person, when strong and sufficient reason is stated for dispensing with the personal attendance of the party in such cases: provided that the judge may, during the trial, exercise a full discretion, notwithstanding any previous orders, in requiring the personal attendance of the defendant, whenever, on consultation with his law officer, it may appear requisite under the provisions of the Mahomedan law, or generally for the ends of justice. *Reg. VI. 1818, sect. 3, cl. 4.*

Judge may admit the appearance of defendant by vakeel at the sessions; but may subsequently require his personal attendance.

1094. In all courts and before all magistrates, or persons exercising any of the powers of a magistrate, every person on trial for the commission of any offence is to be admitted to defend himself either personally or by his authorized agent; and, after the close of the case for the prosecution, to make full answer and defence thereto either personally or by his authorized agent. But this is not to be deemed to dispense with the presence of any person on trial for the commission of any offence, when the presence of such accused person is now by law required. *Act XXXVIII. 1850, sects. 1 and 4.*

Every defendant may defend himself by mokhtar:

but this does not dispense with his presence.

1095. A defendant is bound to appear in person to receive sentence before a magistrate, though he has appeared by attorney, during the progress of the case, to answer the charge and defend himself. And sentence should not be passed in the absence of the defendant. *Reports L. P. 1854, part 1, page 433.*

Defendant must appear in person to receive sentence, though he has appeared by mokhtar.

Such vakeel need not be pleader in civil court.

1096. The vakeel referred to in the preceding paragraphs need not be one of the established pleaders of the civil court. Const. No. 295.

Who are authorized agents.

1097. In those courts in which any person now has by law the right of employing whomsoever he can employ as counsel or pleader, nothing in this Act is to be deemed to restrict that right; in all other cases those persons only are to be deemed authorized agents within the meaning of this Act who are either advocates of one of the supreme courts of justice established by royal charter; or authorized pleaders of the civil courts of the East India Company; or, by leave of the court, magistrate, or other person before whom the prisoner is on trial, any other person who is employed by the prosecutor or prisoner as his agent. Act XXXVIII. 1850, sect. 3.

Vakeels of civil court may not practice in the foudaree court, except with the sanction of the judge, or on the part of government.

1098. The authorized pleaders of the civil courts are prohibited, without obtaining the previous sanction of the judge, from officiating as agents or mokhtars in any prosecution, trial, or proceeding, before the magistrates or their assistants. This prohibition does not apply to the cases of pleaders who may be employed on the part of government in conducting the prosecution of persons charged with criminal offences, or in the execution of any other duties in the criminal department, which such pleaders may be directed or authorized to perform on the part of government, under the regulations which are now or may hereafter be in force. Reg. XXVII. 1814, sect. 17.

Appeals and miscellaneous cases may be conducted by any agent.

1099. Appellants from the decisions of magistrates are at liberty to employ whom they please to conduct their appeals. So also in cases under Act. IV. 1840.(a) But in every case, whatever persons are so employed, the amount of their fees should be adjusted between them and their constituents, and their remuneration secured before undertaking their business; and they should be given to understand that, if they neglect to do so, no assistance to enforce payment of it afterwards will be given. Const. Nos. 371 and 642.

Remuneration.

It cannot be enforced under Reg. VII. 1819.

1100. Regulation VII. 1819 has no reference to the wages of a mokhtar: it applies to workmen and domestic servants only. Const. No. 770.

General mokhtars.

* v. section 2, chapter 4, "Of summons."

1101. The provisions contained in sections 4 and 6, Reg. IX. 1807, and sect. 2, Reg. II. 1806,* clearly recognize the admission of general mokhtars; but, in admitting or rejecting this description of agent, much must of course be left to the discretion of the local authority according to the particular circumstances of each case. Const. No. 512.

May practice in any court specified.

1102. Person holding general mokhtarnamahs may plead in as many courts and cutcherries as are specified therein. Letter of N. A. to Judge of Tirhoot No. 1074, Sept. 7, 1849.

General mokhtarnamahs to be returned.

1103. A general power of attorney may be returned to the party filing, after being attested and acknowledged, at the discretion of the local authority. Const. No. 917.

Permanent mokhtar not to be allowed at police thana.

1104. Police darogahs are enjoined, under penalty of dismissal, not to permit any established vakeel or mokhtar to be permanently employed at their thanas on the part of any landholder, farmer, local agent, or other person. But this rule is not meant to preclude the

(a) This construction was held on the provisions of sect. 2, Reg. XV. 1824.

occasional employment of a vakeel, or mokhtar, for any specific purpose, when it may be necessary. Reg. XX. 1817, sect. 11, cl. 4.

1105. Police officers are prohibited from employing any mokhtar, or vakeel, at the station of the magistrate, for the purpose of receiving and transmitting the salaries of the thana establishment, or for any other purpose connected with their public functions, except in particular cases, wherein they may be especially authorized by the magistrate to employ a vakeel. Reg. XX. 1817, sect. 11, cl. 5.

Police officers are forbidden to employ mokhtars at the sudder station for official purposes.

1106. Money deposited in court as payable to a party should never be paid to a vakeel, save under specific authority conveyed in the vakalutnamah: and for any sum paid away in any other mode, the officer making the disbursement must be held personally responsible. Const. No. 1360.

Payments to.

1107. A magistrate is competent to refuse to acknowledge a mokhtar in his court, who may be proved guilty of any gross misconduct in the execution of his duty in that capacity; and one proved act of such misconduct is sufficient to warrant his general rejection. Const. Nos. 607 and 809.

Misconduct of.

1108. In a civil court the judge has no authority to prevent parties employing whom they please as mokhtar; but in the magistrate's court, where the mokhtar is in appearance for a party, and comes into contact with the court, the employment of an individual may be interdicted. Letter of N. A. to Judge of 24-Pergunnahs No. 38, January 10, 1854.

Magistrate may dismiss a mokhtar.

1109. A person may appoint another his agent for the management of a suit or criminal prosecution, because an individual is sometimes prevented from acting in his own person, in consequence of accidental circumstances, such as sickness; and because every person is not himself capable of managing business of this nature. So, also, it is lawful to appoint an agent for the payment or exaction of rights; but this does not apply to cases of *hudd* or *kisas*, for the absence of the principal would give rise to a doubt of the prosecution, which in such cases would prevent the infliction of a penalty. An agent may be employed even when the principal is present, because every one is not acquainted with the mode of conducting a criminal prosecution. An accused person, also, may employ an agent to conduct his defence; but a confession made by such agent is not admissible against his constituent, because it is doubtful whether he has been authorized to make such confession. These are the opinions of Haneefah and Mahomed in opposition to Abou Yoosuf; but it is not necessary to examine the points of difference between them. A woman, who is not used to appear in public, ought to appoint an agent for the management of her cause. The validity of agency, in any business, rests upon two conditions: *first*, that the constituent be himself legally empowered to perform the business for the execution of which he appoints another; *secondly*, that the agent be of sound understanding, so as to be capable of executing the business to which he is appointed.(a)

Mahomedan Law.
Prosecution.

Defence.

A woman may always employ.
Validity of agency.

SECTION XXIII.

OF THE FUNCTIONS OF THE SESSION JUDGE.

Appointment.

1110. Whenever the measure is deemed advisable, it is competent to government to invest the civil judges within their divisions with full powers to conduct the duties of the sessions. Reg. VII. 1831, sect. 2.

Oath of office,

1111. Session judges so appointed are to take the oath prescribed for a judge of circuit before such person as government may direct, and are to be guided in the conduct of their duties by the rules previously applicable to commissioners of circuit, subject to the modifications contained in this regulation. Reg. VII. 1831, sect. 3. [The following is the oath which a judge of circuit was required to take by sect. 34, Reg. IX. 1793 (*Ced. Prov.* sect. 5, Reg. VII. 1803): "I, A. B. solemnly swear, that I will truly and faithfully execute the duties of judge of the court of circuit for the division of—; that I will administer justice according to the regulations that have been or may be enacted by the governor general in council, to the best of my ability, knowledge, and judgment, without fear, favour, promise, or hope of reward; and that I will not receive, either directly or indirectly, any present or nuzzur, either in money or in effects of any kind, from any party in any suit or prosecution, or from any person whomsoever on account of any suit or prosecution to be instituted, or which may be depending, or have been decided, in the court of circuit of which I am judge; nor will I knowingly permit any person or persons under my authority, or in my immediate service, to receive, directly or indirectly, any present or nuzzur, either in money or in effects of any kind, from any party in any suit or prosecution, or from any person whomsoever on account of any suit or prosecution to be instituted, or which may be depending, or have been decided, in the said court; nor will I, directly or indirectly, derive any advantage or emolument from my station, excepting such as the orders of government do or may authorize. So help me God."]

must be taken,

1112. So long as the law remains in its present state, requiring public servants to make a declaration before entering upon their duties, it is necessary that such declarations should be made in obedience to the law. It is not proper that the acts of public officers should be liable to be called in question by reason of the neglect of what the law regards as an essential form. All declarations should be recorded in the office in which they are made so as to be forthcoming in case of need; and the fact should be reported to the court. Such declarations should be made before the officer appointed by law on that behalf, or before any sworn justice of the peace, or any court of civil or criminal justice. C. O. January 6, 1854. L. P.

**and recorded, and
the fact reported to
the court.****General duties.**

Connected with
criminal justice
transferred from
commissioner of

1113. It is competent to the governors of Bengal and of Agra respectively, by an order under the signature of the secretary to government, to transfer any part, or the whole of the duties connected with criminal justice, from any commissioner of circuit to any session judge, and to define the powers, which shall be exercised by each respectively. Act VII. 1835.

1114. Session judges so appointed are to try every commitment that may be made by the magistrates of their respective jurisdictions, as soon after it is made as may be convenient ; and jail-deliveries for each district are to be held at least once in every month. Reg. VII. 1831, sect. 4.

To try commitments without delay.

1115. The duties of a session judge, in a district to which Act VII. 1835 has been extended, consist in trying all commitments made by the magistrate ; in hearing and disposing of all appeals preferred from orders passed by the magistrate in criminal trials, including the whole progress of a case from the commencement to the date of final sentence ; and in exercising a general superintendence and control over the proceedings of the magistrate in the administration of criminal justice. C. O. No. 233 of vol. 2. This general power has reference only to cases which come before him on appeal or by commitment. He can decide only on the legal accuracy and justice of the orders passed by magisterial officers, who are in other respects subordinate to the authority of the superintendent of police. See paras : 972 and 1127.

Trying commitments.
Hearing appeals.

Superintending the administration of justice.

1116. Session judges so appointed possess all the powers formerly confided to commissioners of circuit, as far as regards the summoning and examination of witnesses, and the passing sentence of acquittal and conviction without reference ; but they are not competent to exercise any authority over the magistrates, or any interference in matters of police.(a) Reg. VII. 1831, sect. 5.

Powers.

The same as those formerly confided to commissioners of circuit.

1117. On the conclusion of the trial or trials, the session judges so appointed are to proceed to pass sentence of conviction or acquittal, or to refer the trial to the nizamut adawlut if required to do so under the rules previously applicable to the commissioners of circuit. Reg. VII. 1831, sect. 6.

On conclusion of trial, to pass sentence, or to refer the case.

1118. The power of a session judge to fine is unrestricted as to amount, except when it is defined by any specific regulation, as in the case of *dhurna* by Reg. VII. 1820. Const. No. 959. This rule is confined to the *Lower Provinces*. C. O. No. 227 of vol. 3. *W. P.*

Power to fine unlimited. *L. P.*

1119. The session judge is to report to the nizamut adawlut every instance, in which it appears to him that the magistrate has been guilty of neglect, or misconduct, in the discharge of his duty. He is also to acquaint the nizamut adawlut whenever the magistrate omits or refuses to obey his orders. *Beng. Reg. IX. 1793, sect. 63. Ced. Prov. Reg. VII. 1803, sect. 30. C. O. No. 233 of vol. 2, para. 3. L. P.*

Miscellaneous duties.

To report misconduct or disobedience on the part of the magistrate.

1120. Session judges are to bring to the notice of the court, for ultimate report to government in serious cases, cases of palpable disregard of the forms of law in the proceedings of a magisterial officer, detected on appeal, or otherwise. Judges are to be held strictly responsible for the proper discharge of this duty. C. O. No. 59 of vol. 4. *L. P. C. O. Sup. Pol. L. P. No. 3 of 1851.*

Or any palpable disregard of the forms of law.

1121. The judge is to submit to the nizamut adawlut such rules as may appear to him calculated for the better regulation of the trials of prisoners, the administration of justice,

To propose new rules for the administration of justice.

(a) The commissioners of circuit were vested by cl. 1, sect. 3, Reg. I. 1829, with "all the powers that may be now legally exercised by judges of circuit when holding the sessions of jail delivery, or by the courts of circuit collectively."

or the police. or the police of the country. *Beng. Reg. IX. 1793, sect. 65. Ced. Prov. Reg. VII. 1803, sect. 33.*

Annual report on the system of administering the criminal laws, &c.

1122. The judge is to submit to the nizamut adawlut an annual report, containing such observations as he has made regarding the effect of the present system for administering the criminal laws in the prevention and punishment of crimes; as well as such other matters as he may think deserving the notice of the court. *Beng. and Ben. Reg. IV. 1797, sect. 12. Ced. Prov. Reg. VII. 1803, sect. 37.*

1123. The session judge is to bring to the notice of the court, whatever he may consider worthy of remark either in the laws in force, or in the instruments for administering them, comprehending such information of the condition of the district under him, as local experience and observation will readily supply, but to convey which the most elaborate figured statements would be inadequate. (a) C. O. No. 98 of vol. 3, para. 11.

Copies of report connected with the police to be sent to the superintendent.

1124. Session judges are to furnish the superintendent of police with copies of such parts of the reports transmitted by them to the nizamut adawlut, as relate to the state of the police, together with copies of the statements reporting the number and nature of the offences committed. C. O. Nos. 243, 251, and 324 of vol. 1; and No. 3 of vol. 2.

1125. The conduct of a preliminary investigation is exclusively in the hands of the police officers, who are responsible for it only to the magistrate and the superintendent of police, and not to the judicial authorities. The session judge should bring to the notice of the superintendent of police, any irregularity or want of efficiency on their part in the exercise of police functions, which he may observe during a criminal trial. Reports *L. P. 1852, part 1, page 1083.*

Not to issue general instructions to magistrate.

1126. A session judge is not warranted in issuing instructions of a general nature for the conduct of the magistrate; that power being expressly reserved to the nizamut adawlut by sect. 3, Reg. X. 1796. Const. No. 204.

The same rules applicable to other officers holding sessions.

1127. The foregoing rules (of this regulation) are applicable to all cases in which any other person, not being the judge of the district, may be directed to hold a trial or sessions within any division, in which he may not have charge of the office of commissioner. Reg. VII. 1831, sect. 11.

Government may appoint another officer to hold the sessions.

1128. It is at all times competent to government to direct any commissioner, or judge, not being the magistrate by whom commitments were made, to hold the sessions of jail delivery, with the powers and authority of a court of circuit, whenever the arrangement appears necessary for the prompt and efficient administration of justice, and circumstances render it inconvenient to appoint such officer to officiate with all the powers of the commissioner. (b) Reg. I. 1829, sect. 5, cl. 2.

(a) The rules regarding periodical reports and statements will be found in appendix D.

(b) In reference to the late appointment of an officer to be additional session judge for the millahs of 24-Pergunnahs, Hooghly, Nuddea, and East Burdwan, the following instructions were communicated by government to the nizamut adawlut.

"The primary duty of the additional sessions judge will be to try the commitments of the magistrates and joint-magistrates of the districts above named, including Howrah and Baraset; and for this purpose he will be expected to visit each

1129. Session judges of those districts in the Western provinces to which outstations are attached are to proceed thither for the purpose of holding jail deliveries, after every second month, where the outstations may be comparatively near, and the means of travelling rapid; or elsewhere, after every quarter; and they will be allowed the usual travelling charge on each occasion. C. O. No. 975, August 2, 1854. *W. P.* When proceeding on circuit, he is to make over charge of the current duties of his office to the principal sudder ameen. C. O. S. D. A. No. 235, February 2, 1855. *W. P.*

Session judges to proceed to outstations every other month, or once a quarter, according to distance;

making over charge to principal sudder ameen.

1130. Commissioners of circuit appointed under the provisions of Reg. I. 1829, are authorized and required, without making any previous reference for sanction either to government or to the nizamat adawlut, to hold jail deliveries as often as may be convenient for any of the districts within their divisions, whenever, owing to absence, indisposition, or other cause, the session judge shall have been unable, for a period exceeding one month, to perform that duty; or whenever such judge may be prevented from trying any case or cases by reason of his having made the commitment or commitments in his capacity of magistrate or joint-magistrate, or from any other cause. Reg. VII. 1831, sect. 13, cl. 2.

Commissioners of circuit to hold sessions in the absence of the judge,

1131. Whenever a session judge has been prevented by any of the above causes from holding the sessions of his district for the period of one month, he is to communicate the circumstance to the commissioner of the division, if in the Western provinces; or direct to the nizamat adawlut, if in the Lower provinces; with a view to such arrangements as the emergency may appear to demand. C. O. No. 115 of vol. 2; and No. 7 of vol. 3, para. 6. *L. P.*

Session judge to report if he is unable to hold the sessions.

sudder station, viz: Alipore, Hooghly, Kishnaghur, and Burdwan, once in every three months; relieving the session judges of those zillahs of all sessions trials, except such as they may be directed by the sudder court to take up and dispose of, in consequence of the detention of the additional judge elsewhere, and in order to prevent delay in the administration of justice. These directions may either be issued by the court from time to time on inspection of the returns, or the court may in communication with the judges and additional judge, and after some experience of the working of the new plan, give them general instructions for their guidance in the disposal of sessions cases.

“The additional session judge will, as is at present done by the session judge, try the Baraset and Howrah commitments at the sudder station of the 24-Pergunnahs.

“The sudder court will exercise their discretion in assigning to the additional judge the hearing of criminal appeals (or a portion of them) from the decisions of magistrates and joint-magistrates. It would doubtless be very desirable that all the appeals should be heard by the additional session judge; but the court will of course be guided in this respect by their experience of the amount of sessions business which may press upon him, and his consequent ability or inability to undertake other duties.

“The additional judge will, after communication with the zillah judges, who should be able to spare a portion of their establishment for his assistance, report directly to the government on the establishment which he may consider necessary for the duties of his office. In the meantime he is authorized to entertain temporarily whatever establishment may be requisite for his purposes. He will indent for stationery either through the zillah judges or independently of them as he may find convenient; regarding forms and statements the additional judge will be guided by such instructions as the court may think proper to give him.

“The circuit houses at each station will be placed at the disposal of the additional judge during the terms of his sessions visits. As other officers* are also entitled to the use of these houses, the additional judge will endeavour to time his visits in communication with them, so that there may be no embarrassment regarding priority of occupation.

“The zillah judges and magistrates will be directed to afford to the additional judge on occasion of his circuits all the official accommodation and assistance in their power.”

* Commissioners of revenue and circuit, and executive officers of the division when on duty at stations not their head quarters.

If the session duties are reserved to the commissioner.

1132. The several commissioners, in whose divisions the provisions of this regulation may be partially introduced, are also required to try the commitments that may be made by the magistrates of those districts, the session duties of which may be reserved to them, as soon after the commitments are made as may be practicable, consistently with the due performance of their other duties. Reg. VII. 1831, sect. 13, cl. 3.

Cases in which previously concerned.

Session judge is not to try commitments made by himself;

1133. No session judge, whether fully appointed or officiating, is on any account to preside at the trial of any case in which the prisoner or prisoners have been committed for trial by himself in his capacity of superintendent of police, magistrate, joint-magistrate, or assistant-magistrate. In all such cases the trial is to be postponed until it can be brought before another judge, or person appointed to officiate as such; and a report of the case is to be made to the nizamat adawlut, who are to determine what provision is to be made for the immediate trial of the case. Reg. IV. 1823, sect. 6.

nor if he has been previously concerned in the case;

1134. In a case of murder in a foreign territory, it appeared that the commissioner, who tried the prisoner, was the officer who had originally applied to government for permission to commit him for trial on the above charge, although he was not actually the committing magistrate. The nizamat adawlut were unanimously of opinion, that the proceedings held on the trial were virtually in contravention of the law, and accordingly quashed them, and ordered the prisoners to be tried *de novo* by a competent officer. N. A. R. vol. 3, page 334.

nor to try appeals from his decisions;

1135. No session judge is to take cognizance of appeals against decisions, or orders, passed by himself in the capacity of magistrate, joint-magistrate, or assistant-magistrate, or in any other capacity. Reg. XXV. 1814, sect. 12, cl. 4.

nor if he has previously committed others in the same case.

1136. A session judge, having previously as magistrate committed several persons in a case, was informed that he should not try another prisoner implicated in the same case in his own magisterial proceedings, but subsequently apprehended and committed by another officer. Const. Nos. 685 and 686.

Judge may try a person committed by himself for perjury;

1137. It is competent to session judges to try persons committed by themselves as civil judges for perjury or subornation of perjury. Act I. 1848, sect. 4.

and may try, if he made over the case as civil judge to the magistrate, and the latter has committed on his own discretion.

1138. A session judge is competent to try a prisoner committed by a magistrate on his own discretion, in a case sent to the magistrate by the judge, in his civil capacity, to commit or otherwise dispose of as he might think proper. Const. No. 975.

So, the appeal, if he as civil judge made over the case to the magistrate to be punished or not at the discretion of the latter.

1139. A judge in his civil capacity made over a person to the magistrate for resistance to a process issued from the civil court; the magistrate convicted and punished him, and he appealed. The session judge declined to receive the appeal, on the ground that he was a party concerned; but it was held by the nizamat adawlut that as the order of the magistrate was passed on a regular criminal trial, the appeal must under the existing law be heard by the session judge. Const. No. 1033.

When the judge from the above reasons cannot try a commitment, he is to report to government.

1140. Whenever a session judge is prevented from taking up a case, which has occurred within his jurisdiction, in consequence of his having made the commitment as civil judge or magistrate, or from any other cause, he is immediately to report the circumstance to govern-

ment, with a view to such special provision being made for the trial of the case as may be deemed proper. He is, at the same time, to state to which of the neighbouring tribunals the case in question could be most conveniently referred, with advertence to the residence of the parties concerned. C. O. No. 17 of vol. 3.

1141. The trial of such cases, as have been committed and are ready for trial previous to the commencement of the dusserah or the mohurram vacation, should be completed although the vacation supervenes in the course of it. And, during those vacations, the court ought never to be closed for the despatch of criminal business, except on those days only, when a total cessation from all business is necessary and usual. C. O. No. 141 of vol. 2; and No. 8 of vol. 3.

Miscellaneous rules.

How far the session's court may be closed in the vacations.

1142. The judges are empowered, at their discretion, to employ their head clerks in the following duties:—attesting copies of decrees and other documents granted to parties on stamp or plain paper under the judge's orders:—attesting copies of proceedings sent to the local authorities, and to other districts, under the judge's orders; registering in English the mokhtarnamahs, and preparing them for the judge's attestation. But the head clerk, when entrusted with such duties at the discretion of the judge, is never to attach his signature to any document without its correctness having been previously attested and certified by the head ministerial natives of the judge's court. C. O. No. 91 of vol. 3.

Duties on which the judge may employ his head clerk.

1143. Judges applying for leave of absence are enjoined strictly to conform to C. O. S. D. A. dated January 4, 1811, which requires that every application for leave of absence should be accompanied by a statement of business, pending before the officer making it, in all departments. C. O. No. 202 of vol. 2; and C. O. No. 30 of vol. 4. *W. P.*

Application for leave of absence to be accompanied by report of business pending.

1144. Session judges are always, before availing themselves of leave of absence, to prepare the statements of prisoners punished without reference or acquitted by themselves, filling up the columns of explanation and remarks: or they are to furnish the officer in charge of the office with a certificate of the cause of their inability to do so, to be submitted with the statements. C. O. No. 193 of vol. 2.

Before going on leave to prepare the monthly statements.

1145. A deceased judge having left a decision unsigned, his successor was directed to examine the vakeels of the parties in whose presence the decision was given, and the person who wrote it out, and to compare it with any note in the handwriting of the late judge which might be forthcoming; and, unless the result of the enquiry should lead him to doubt the genuineness of the decision, to sign it, making a short memorandum explaining why it was signed by him. Const. No. 910.

Roobakaree left unsigned by deceased judge.

1146. Whenever a session judge makes over charge of his office to an officer not authorized to act as judge, he is to call the particular attention of the latter to the following rule, and to certify that he has done so in his letter, reporting the fact to the nizamat adawlut. Whenever the charge of the current duties of session judge, from death, indisposition, or other casualty, devolves to the assistant attached to the court; or whenever an assistant, or other covenanted European officer, by the orders of a competent authority, takes charge of the current duties of the office of session judge, (not being vested by government with the

Officer in charge of current duties.

Powers and duties.

full power of judge) such officer is to confine himself to the exercise of such part of the powers of judge as may be indispensably necessary for the immediate execution of processes or orders of the nizamat adawlut, for the issue of warrants under sentences of that court, making returns to such warrants, and the transmission to the court of the proceedings in criminal trials, for the execution of the processes from other courts, or for such other cases of emergency as will not admit of delay. The officer in charge will likewise cause to be prepared and forwarded any statement or reports which the judge may, under the rules in force, be required to submit to the nizamat adawlut, or to government. C. O. No. 159 of vol. 2.

In case of an appeal from the order of a magistrate.

1147. On receipt of a petition for staying execution of any order of a magistrate, against which an appeal has been lodged, the officer holding temporary charge of the session judge's office is immediately to transmit a copy thereof, with a proceeding, to the magistrate's court, in order that that officer, being made acquainted with the purport of such application, may have the opportunity of exercising his discretion in regard to the suspension of his order appealed against, either with or without taking security, until the appeal can be brought to a hearing before the session judge. C. O. No. 38 of vol. 3.

Power to grant leave of absence,

1148. Officers in charge of the current duties may exercise the power of granting leave of absence for a limited term, and when urgently required in cases of emergency not admitting of delay, to the vakeels of the court, and generally to the amlah of the judge's establishment. Const. No. 1242.

SECTION XXIV.

OF THE SESSIONS.

General rules.

The importance of matters of form.

1149. Matters of mere form, when connected with a criminal trial on which the character, liberty, and often the life of an individual depends, assume a degree of importance, which, on a superficial view of the subject, they might not appear to possess. The circular orders contain clear and compendious directions on the mode of conducting trials, and a strict adherence to them is deemed essential. C. O. No. 135 of vol. 2.

Mode of distinguishing trials,

1150. Each trial is to be distinguished by the month in which it is held. In districts to which Reg. VII. 1831 has been extended^(a) the magistrates are to keep separate calendars for each month, entering the trials thereon in regular order. The heading of trials to be prefixed to the record in both English and Persian, should therefore be as follows :

“ COURT OF THE SESSION JUDGE OF ZILLAH———.

“ Trial No. 1 of the sessions for the month of———, 185 —.

“ Case No. 3 of the magistrate's calendar for the month of———, 185 —.

(a) That is, zillahs in which the duties of the sessions are conducted by a judge, instead of a commissioner of circuit.

رویداد تجویز عدالت سیسی ضلع فلان مقام فلان باجلاس فلان صاحب سیسی جم و روبروی فلان
مولوی عدالت^(a) مقدمہ نمبر فلان بابت سیسی ماہ فلان مطابق نمبر فلان کلندره صاحب مہسٹرت
بابت ماہ فلان^(b)

The monthly statements connected with the sessions should, in like manner, be designated by the month, in which the trials entered in them were concluded by sentence or postponed. C. O. No. 108 of vol. 2, and No. 186 of vol. 1.

and sessions statements.

1151. The trial of a prisoner having been held in the jail on account of her approaching confinement, the proceedings were quashed, and the session judge was directed to try her *de novo* in the established court house, as soon as she should be sufficiently recovered. N. A. R. vol. 6, page 33.

Sessions must be held in the established court house.

1152. The practice of holding more than one trial at the same time is prohibited, as wholly unauthorized by the regulations. C. O. No. 125 of vol. 1.

More than one trial not to be held at once.

1153. The trials of prisoners upon distinct charges, especially when the prosecutors are also distinct, should as far as possible be kept separate by the magistrate and the session judge. C. O. No. 2 of vol. 1.*

Trials on distinct charges to be kept separate.

1154. Persons committed in the same case on different dates, and entered in separate calendars, may be all tried together, and disposed of in the returns as one case. Reports L. P. 1854, part 1, page 637.

But persons charged with the same offence in different calendars may be tried together.

1155. The proceedings on all criminal trials are to be written in a clear legible hand on paper 12½ inches by 9½, or as nearly that size as may be procurable; a numerical list of the papers, corresponding with the marginal notes of the record, is to be prefixed, and the whole closed by adding an extract from the magistrate's vernacular calendar relating to the case. The nuthee, or bundle of papers composing the trial, is to be firmly connected by a string or tape, passed through the papers on the right hand side towards the top, the ends of which are to be united with wax, and the seal of the court impressed thereon. C. O. No. 54 of vol. 2, para. 2. C. O. No. 2, February 7, 1856. L. P.

Proceedings.

How to be written and filed;

1156. The papers forming the record of the trial are to be entered thereon, in the same order as the proceedings are held, a marginal note being made on each separate paper, descriptive of its nature, and corresponding with the numerical list above mentioned. The record is to be headed *mutatis mutandis* as set forth in the given form,* including a transcript in English and the vernacular of the charge on which the accused is put on his trial, as directed in the final order of commitment. C. O. No. 54 of vol. 2, para. 3.

and how to be arranged.

* See Appendix C, No. 10.

1157. Session judges are to pay particular attention to the orders above cited, and to impress upon the officers of their courts, that the additional degree of labor incident to a more careful arrangement of the papers in each case is trifling in comparison with the objects

Judges to pay particular attention to the above rules.

(a) In cases tried under Reg. VI. 1832, with the aid of panchayats, assessors, or jurors, the names and designations of such persons employed should be entered in lieu of the Mahomedan law officer. Note to printed circular.

(b) The use of the Persian language having been abolished, Urdu or Bengallee must now be substituted.

contemplated; and is only increased by carelessness in the first instance, as in such cases it is found necessary to return the whole proceedings for amendment. The judge should himself carefully examine each case previous to submitting it to the court. C. O. No. 100 of vol. 2.

Description of the weapon in cases of personal injury.

1158. In cases of murder, wounding, or other personal injury, a description of the weapon, or other instrument, said to have been used in the perpetration of the act, should be here recorded; including, where such particulars are at all available to fix the intent of the prisoner, the length of the instrument, its general form if not one in common use, its thickness, and weight. C. O. No. 54 of vol. 2, para. 4.

Description of stolen property recovered;

1159. In cases of robbery or theft a description should be entered of any articles laid before the court, as forming part of the plundered or stolen property; specifying the number attached to each article, and where, and under what circumstances, it may have been found. C. O. No. 54 of vol. 2, para 5.

and each article to be numbered

1160. The number of each article is to be in accordance with that affixed to it in the chalan, which the police darogah is required to transmit to the magistrate by cl. 20, sect. 16, Reg. XX. 1817. Police officers are to be careful in affixing such number, and magistrates are invariably in their proceedings to describe and number the property according to the same chalan. C. O. No. 276 of vol. 1.

Order to be observed in the conduct of proceedings.

1161. The proceedings on the trial of prisoners are to be conducted in the following manner. The charge against the prisoner, his confession (which is always to be received with circumspection and tenderness) if he plead guilty; or, if he plead not guilty, the evidence on the part of the prosecutor; the prisoner's defence; and any evidence which he may have to adduce; are to be heard before the law officer, who is to be present during the whole of the trial. *Beng. Reg. IX. 1793, sect. 47. Ced. Prov. Reg. VII. 1803, sect. 15, cl. 1.*

Order to be kept strictly.

1162. The session judge is to observe strictly the order of proceeding pointed out in the above provision, viz. the charge against the prisoner; his confession or denial; the evidence on the part of the prosecutor; the prisoner's defence; and any evidence he may have to adduce in support thereof. C. O. No. 19 of vol. 1.

Prisoner not to be examined, nor his previous confessions recorded, till after the close of the case for the prosecution

1163. It is irregular in the session judge to enter upon an examination of the prisoner touching confessions stated to have been previously made by him, or other matters, immediately after receiving the charge from the prosecutor. He should confine himself, in the first instance, to taking from the prisoner a plain answer of guilty or not guilty, and then proceed to the examination of the witnesses who are summoned in support of the facts charged against the prisoner; after which, and not before, any confession stated to have been made by the prisoner should be recorded on the proceedings. C. O. No. 193 of vol. 1.

Prosecutor's statement.

Prisoner's plea.

Evidence for prosecution

Certain papers to be filed in original with translations.

1164. After the papers above noted, there will follow the prosecutor's deposition; the prisoner's plea of "guilty" or "not guilty" to the charge (which should always be explicitly stated to him in the words prefixed to the record); and then the evidence on the part of the prosecution, in the course of which, if any papers borne on the magistrate's proceedings form part of the proof, as written confessions, inquests, declaration of a dying person, and the like, such papers should be entered on the record of trial in original, and evidence taken thereto;

attested copies being substituted in their stead on the magistrate's proceedings. Translations are to be made and annexed to the originals, where the latter are written in a peculiar or corrupt dialect. C. O. No. 54 of vol. 2, para. 6. C. O. No. 26 of vol. 3, para. 4. *W. P.* C. O. No. 52 of vol. 4. *W. P.*

1165. The session judge should always place a formal and official record of a former conviction of a prisoner on the record of any trial, in which such former conviction may be made the ground of aggravating a sentence. Reports *L. P.* 1851, page 297.

Record of former conviction to be filed, if made ground of aggravation of sentence.

1166. After the deposition of the prosecutor, the prisoner is to be called on to plead "guilty" or "not guilty" to the charge; the nature of the charge having been distinctly explained to him, in this stage of the proceedings no further questions should be addressed to the prisoner. C. O. No. 129 of vol. 2.

Prisoner's plea to charge.

1167. In calling on the prisoner to plead, the judge should be careful that the question addressed to him corresponds exactly with the written charge; and where more than one prisoner may be included in a case, the question should be addressed, separately and distinctly, to each by the judge himself. C. O. No. 135 of vol. 2.

Charge to be stated exactly.

1168. When the session judge, in calling upon a prisoner to plead, omitted to state to him that part of the charge which denoted the aggravating circumstances of the crime, it was held that the prisoner could not be convicted of that part of the charge, to which he was not called on to plead. *N. A. R.* vol. 5, page 162. And where the vernacular calendar charged the prisoner with *razdaree* or privity, while the English calendar charged him as an accessory, it was held that he could be convicted of privity only. Reports *W. P.* 1853, part 2, page 1344.

Importance of being exact.

1169. Although the prisoner pleads "guilty," the court should proceed with the trial in the ordinary course. Const. No. 650.

If plea of guilty, trial to proceed.

1170. In cases of murder, or wounding, endangering life, when the body or wound has been inspected by the civil surgeon (as it should be in all practicable cases), the deposition of the surgeon should be invariably taken on oath, instead of merely requiring a written report addressed to the magistrate or judge; and it may be here observed, generally, that no report or paper should be placed on the record, or referred to in *proof* of the charge, unless the same be established by evidence. C. O. No. 54 of vol. 2, para. 7; and No. 42 of vol. 3.

Deposition of surgeon.

Written statements must be supported by evidence.

1171. It is not sufficient to show to the civil surgeon the deposition previously made by him before the magistrate, and to ask him if it contained a correct representation of the circumstances. Every witness should be examined in the sessions court at length *de novo*; a professional witness being at liberty, with permission of the court, to refer to any memoranda made by him at the time for the purpose of refreshing his memory. Reports *W. P.* 1854, part 1, pages 367 and 381.

Surgeon to be examined *de novo*.

1172. Evidence taken in the magistrate's court is not proof on which a prisoner, committed to the sessions, can be convicted. The guilt of a prisoner made over for trial to the sessions court must be established by evidence taken in that court; and admissions stated to have been made by the accused before the magistrate can be rendered available as proof

Guilt of prisoner must be established by evidence taken in sessions court.

against him on the trial only by being proved before the session judge in the usual manner. Reports *W. P.* 1852, page 1410; and reports of both courts *passim*.

Facts given in evidence must be proved in the presence of the prisoners.

1173. In a case in which certain prisoners were committed on a charge of being accomplices in a crime, of which some of their associates had been previously convicted, the session judge proceeded entirely upon the record of the former trial. This was held to be insufficient, because the former proceedings, so far as these prisoners were concerned, were *ex parte*. All the facts should be proved in the presence of the prisoners, before they are called on to make a defence. The proceedings were quashed, and the judge was directed to proceed *de novo*. N. A. R. vol. 5, page 17.

1174. The evidence of witnesses for the prosecution in a criminal trial cannot be taken in the absence of the accused, even in proof of his confession. Const. No. 658. N. A. R. vol. 1, page 300.

Witnesses to confessions must always be examined.

1175. The witnesses to confessions should always be examined, whether their evidence appears to be material or not; because all the evidence should be recorded before the prisoners are called upon to defend themselves, and the nature of the defence may render the evidence to the confessions necessary. Reports *L. P.* 1852, part 1, page 823.

Re-examinations.

1176. When witnesses are re-examined, the supplemental deposition should be recorded in the same place with that originally given, for facility of reference. Reports *L. P.* 1853, part 1, page 541.

In case of retrial evidence must be taken *de novo*.

1177. When the nizamat adawlut quashed a commitment and trial for culpable homicide, and directed a re-commitment on the charge of murder, it was held that it was irregular to swear the witnesses to the truth of their former depositions: that the trial on the charge of murder must be complete in itself, and without reference to former proceedings; and that therefore the judge must examine the prosecutor and witnesses over again in detail, and take the defence of the prisoner to the new depositions. Reports *L. P.* 1852, part 2, page 796. Reports *W. P.* 1853, part 1, page 50.

Judge to notice discrepancies in the depositions of the same witness.

Foujdaree deposition is not to be read before the witness has given evidence.

1178. The session judge is to be careful to notice on his proceedings any material difference between the depositions of the same witnesses before him, and the magistrate, and is to question the witnesses thereupon, and to record their answers; but the depositions taken before the magistrate are not to be read before the sessions court in the presence of the persons who gave the same, until they have been re-examined before the sessions court. *Beng. and Ben. Reg.* IV. 1797, sect. 7, cl. 7. *Ced. Prov. Reg.* VII. 1803, sect. 18, cl. 6.

1179. It is the duty of the judge to record in the proceedings any such contradiction whether in the evidence of the witness on trial, or as compared with his former deposition before the magistrate. C. O. No. 54 of vol. 2, para. 12.

Magistrate's roobakaree admitting approver to be filed.

1180. The judge is to annex to the deposition of a witness, giving evidence under the offer of a conditional pardon, the roobakaree of the magistrate in which he has recorded the offer of the pardon, and his reasons for making the offer. C. O. No. 113 of vol. 4; *L. P.* and No. 957, August 2, 1854. *W. P.*

1181. The prisoner is not to be called upon for his final defence, until something has been established against him, of which it is necessary that he should furnish a refutation. N. A. R. vol. 2, page 454.

DEFENCE.

Prisoner cannot be called upon for defence, until the crime charged is proved.

1182. If the evidence for the prosecution is, in the opinion of the session judge and law officer, clearly insufficient to prove the charge against the prisoner, it would be superfluous to proceed with the defence. If, on the other hand, the witnesses for the prosecution should make any statement, which, supposing it to be credited, might tend to inculpate or criminate the accused person, the trial must be completed in the ordinary way. Const. Nos. 1256, and 1267.

If evidence for prosecution is insufficient, proceedings to be closed at once.

1183. It is not within the competence of a judge to decline putting a prisoner on his defence, and taking a futwa from his law officer regarding him, on account of his extreme youth, or other cause. N. A. R. vol. 2, page 310.

But judge must take defence, if the charge is proved.

1184. After the close of the evidence for the prosecution, the prisoner is to be called upon for his defence, no questions being addressed to him beyond those necessary to elucidate his meaning; and every thing of the nature of an examination, especially such questions as might lead him to criminate himself, being carefully avoided. And evidence is then to be examined on his behalf. C. O. No. 129 of vol. 2, *W. P.*; and 54 of vol. 2, para. 8.

Prisoner is not to be examined so as to criminate himself.

1185. It is irregular in a session judge to cross-question a prisoner on trial, after taking his defence, with a view of drawing from him answers which might have a tendency to convict him. N. A. R. vol. 2, pages 7, and 220. Reports *W. P.* 1853, part 2, page 1088.

1186. It is irregular in a session judge to enter into any examination of a prisoner as to his confession, beyond his simple avowal or denial of the same. N. A. R. vol. 2, page 185.

Nor cross-questioned as to former confession.

1187. The confession of a prisoner is always to be received with circumspection and tenderness. *Beng. Reg.* IX. 1793, sect. 47. *Ced Prov. Reg.* VII. 1803, sect. 15, cl. 1.

Confession to be tenderly received.

1188. Unless the prisoner deny *in toto* having made any, his mofussil or foudjaree confession or examination adduced in evidence against him, though not proved by the testimony of the subscribing witnesses, should be read and explained to him at the time of taking his defence, and his admission or denial of the same entered on the record. It should also be read and explained to the subscribing witnesses. If the subscribing witnesses are unable to prove a confession, the judge may call upon the person by whom it was written, and the police officer, magistrate, or other officer before whom it was made, and by whom it is attested, to depose to any circumstances required to be known connected with it. Const. No. 763. N. A. R. vol. 2, page 351.

Previous confessions to be read to prisoner, and witnesses.

The writer of the confession, and the officer before whom it was taken, may prove it.

1189. It is irregular to cause the mofussil confession of a prisoner to be read over to him at the trial, before the subscribing witnesses to it have been examined. N. A. R. vol. 5, page 54.

1190. The session judge is carefully to examine the subscribing witnesses to foudjaree confessions, so as to ascertain that there has been no deviation from the above rules, and that the confessions were taken under the immediate inspection of the magistrate, and under cir-

Irregularities of the magistrate or the police to be noticed.

cumstances which excluded any improper interference or influence. He is to notice in his proceedings any irregularities of the police officers, which have escaped the animadversion of the magistrate; and to report any transgressions on the part of the latter to the nizamat adawlut. C. O. No. 73 of vol. 1, paras. 10 and 11; and No. 54 of vol. 2, para. 22.

Judge is to examine witnesses for defence, if prisoner has no counsel.

1191. The judge should question the witnesses cited by a prisoner, who is undefended by counsel, in regard to the points to prove which they are called. It is not sufficient to ask them merely what they know in his favour. Reports *L. P.* 1856, part 1, page 168.

All witnesses for the defence must be examined.

1192. The judge cannot decline to examine witnesses for the defence, of whatever nature their evidence may be, on the ground that he could attach no weight to their testimony. N. A. R. vol. 6, page 12. Reports *L. P.* 1852, part 2, page 184.

Witnesses for the prosecution may be re-examined for defence.

1193. It is irregular not to hear witnesses for the defence, on the ground that they have been already heard for the prosecution, as it is clearly at the option of the prisoner to delay putting any questions to them until he has completed his own defence, in order to support which he names such witnesses. N. A. R. vol. 2, page 37; vol. 4, page 228.

If prisoner objects to examination of his own witnesses, judge may not examine; and without prisoner's desire he need not examine those cited in the foudjaree.

1194. If a prisoner objects to examine his own witnesses on the ground that the prosecutor has tampered with them, the judge ought not to examine them. Const. No. 1203. N. A. R. vol. 5, page 115. And if the prisoner states that he has no witnesses to support his defence, it is unnecessary to examine those whom he has previously cited in the foudjaree court. Reports *L. P.* 1852, part 2, page 922.

If prisoner requires witnesses in his defence, he must apply specially for them.

1195. If the prisoner has expressed no desire at the sessions trial that any witnesses should be examined in his behalf, he cannot afterwards plead in appeal that no witnesses were examined in support of his defence. Reports *L. P.* 1852, part 2, page 299.

Due measures must be taken to procure the attendance of witnesses for the defence.

1196. When the attendance of witnesses named for the defence can be procured, it is not a sufficient reason for not postponing the case that the plea which they are called for to prove is apparently false. Satisfactory reasons must always be assigned for the absence of such witnesses. Reports *L. P.* 1854, part 1, pages 23 and 129. The judge is required to see that due measures are taken to secure the attendance of witnesses for the defence as well as the prosecution.

If the prisoners names witnesses for the first time in the sessions court, it seems that it is not always necessary to send for them.

1197. It is unnecessary to postpone a trial in order to obtain the evidence of a witness, who is named by the prisoner in his defence for the first time during the sessions trial. Reports *L. P.* 1852, part 2, page 273. But, in regard to calling for witnesses whom the accused has not previously named, the practice appears to have varied. For example, in Mohurram Bee's case, where the prisoner asked in the sessions court to cite witnesses who could prove that her confessions were extorted from her, and the judge did not send for them, the nizamat adawlut returned the proceedings, and desired him to re-open the case for the purpose of summoning and examining them. [Reports *L. P.* 1853, part 1, page 72.] But in a subsequent trial for murder, when the prisoner pleaded that he had been forced to confess in the mofussil, and that he had been drugged by the burkundazes who took him before the magistrate; and the session judge "did not deem it necessary to summon the witnesses to support or disprove his defence, which was so manifestly false, as he had twice confessed

his guilt, and his own mother and father-in-law both distinctly deposed to his having killed his wife,"—the sudder court "concurred with the session judge that it was unnecessary to summon the witnesses referred to by him, as by Reg. IX. 1796,* only those named at the time of commitment or before the sessions are to be sent for." [Reports *L. P.* 1856, part 1, page 328.] It is to be observed, however, that the declared object of the law referred to is that the fullest opportunity may be given to all prisoners to adduce evidence in support of their innocence.

* *v. paras.* 457
et seq.

1198. The committing officer can claim no right to send up witnesses, not originally named in the calendar, after the trial has been taken up by the session judge. But if either party, whether prosecutor or defendant, wishes during the course of the trial to produce further evidence, of which, or of the necessity of which, he had no means of obtaining previous information; or which may have been, subsequent to the commitment, discovered or considered requisite; he may be permitted to bring the fact to the notice of the judge, who will, for special reasons, which must be placed on record, decide whether it shall or shall not be admitted. Reports *L. P.* 1854, part 2, page 386.

Neither magistrate, nor prosecutor, nor defendant, can as of right produce further evidence, but judge may admit, recording reasons.

1199. It is competent to the session judge, at any stage of the trial before him, to call for further evidence. If further evidence for the prosecution be required, it should ordinarily be called for before the defence is taken, and, if required for the defence, after the defence has been recorded: but there is nothing illegal or irregular in taking fresh evidence at any time before closing the proceedings and taking a futwa from the law officer. Reports *L. P.* 1853, part 1, page 270.

Judge may call for further evidence at any stage of the trial,

See Section of Postponed Trials.

1200. It is illegal to take further evidence on the part of the prosecution after closing the proceedings and taking a futwa from the law officer. N. A. R. vol. 2, page 404.

before the futwa is recorded;

1201. After the proceedings in a case were closed, and the assessors had delivered a verdict of guilty against one of the prisoners, "unless he could establish his defence," the session judge, instead of directing them to re-consider their verdict, with reference to the irregularity of the finding, postponed the case, took fresh evidence, and called on the assessors to give a fresh verdict regarding this prisoner, who was then found guilty by them. These proceedings were characterized by the court as utterly illegal and irregular; and considering such irregularity fatal to the conviction, they directed the release of the prisoner. If the judge had referred the case under the first verdict of the assessors, the court would have rectified the irregularity by directing him to call upon the assessors for an unconditional verdict; or setting aside the verdict altogether, would have instructed him to complete the proceedings by taking the further evidence. But as he sent up the proceedings completed, the court considered themselves bound to pass sentence. N. A. R. vol. 5, page 38.

or the jury have given in their verdict; without the authority of the nizamat adawlut.

1202. After the completion of a trial by the session judge, and the reference of the case to the nizamat adawlut, further evidence was submitted by the magistrate calculated to change entirely the features of the case in favor of the prisoner. The court held that it was not necessary to quash the trial; but, cancelling the futwa of the lower court, they directed the session judge to proceed with the case, by taking the fresh evidence, calling upon the

The nizamat adawlut admitted further evidence, after the reference of the case, by cancelling the futwa.

prisoner for a fresh defence, and the law officer for another futwa, and disposing of the trial on its merits, as exhibited by the result of the further enquiry. N. A. R. vol. 5, page 40.

If further evidence is taken after close of defence, prisoner may make further defence.

1203. The evidence of certain witnesses for the prosecution having been taken after the prisoner's defence, without his having been called on for a further defence as regarded such testimony, the nizamat adawlut held that the proceedings were informal, and they were returned that the omission might be supplied. N. A. R. vol. 1, page 245; vol. 2, page 481. Such further defence must invariably be taken after fresh evidence for the prosecution, although the position of the prisoners has not been affected thereby. Reports *L. P.* 1854, part 1, page 411.

Trial may be completed in regard to some, and postponed as to others of the prisoners.

1204. In cases where there are several prisoners, and the evidence regarding some of them is completed, but it is necessary to postpone the case in the absence of witnesses summoned on the part of the other prisoners; the judge is competent to exercise his discretion in concluding the trial of the prisoners whose cases are completed, and passing sentence on them, postponing a final decision on that part of the trial only, which affects the prisoners for whom further evidence is required. C. O. No. 302 of vol. 1.

In what cases the personal attendance of the accused may be excused.

1205. Upon general principles, the fitness of requiring the actual personal attendance of the accused in the great majority of cases, which fall under the cognizance of the session courts, is obvious: but in less serious cases circumstances may exist to warrant exception to the rule. If, for example, the accused is a female, who, according to the usages and prejudices of the country, could not with propriety personally attend a court of justice, her personal attendance might be very properly dispensed with. But in the event of a doubt on this point, the question should be referred to the law officer under sect. 54, Reg. IX. 1793.* If the law officer declare the accused warranted by the Mahomedan law, in his application to have his personal attendance dispensed with, the judge should proceed with the trial. On the other hand, if he declare the accused not entitled to the indulgence, or that the determination of the point rests with the judge, as the judiciary delegate of the sovereign, it would be competent to the judge to admit or reject the application as might be deemed just and consistent with proper principle. Const. No. 137.

* r ¶ 1296.

Parentage of Christian prisoner to be noted.

1206. Whenever a Christian is tried, his parentage and place of birth are to be stated distinctly in the jail delivery statements, or in the letter of reference if the case is referred to the nizamat adawlut. C. O. No. 113 of vol. 2. *L. P.*

Prisoners are to be referred to by their names throughout.

1207. Prisoners are always to be referred to in the depositions of witnesses, and the futwas of the law officers, by their names, and not by the numbers they bear in the calendar. C. O. No. 216 of vol. 3.

Prisoners tried under false names.

1208. When prisoners have been tried under false names, but their real names are discovered before the completion of the trial, the judge should designate them in the warrant by the names under which they were arraigned and pleaded, adding their since-discovered real names by an *alias*. Const. No. 1034.

1209. When the age of a prisoner appears to have been incorrectly stated by himself, or in the calendar, the judge should record the conviction at which he and the jury arrive on that point. C. O. No. 105 of vol. 1. Reports *W. P.* 1852, page 1095.

If any doubt as to prisoner's age, judge to record opinion formed by the jury and himself.

1210. Particular attention should be paid to correctness and uniformity in the manner of spelling the names of prisoners in the record of evidence. Where several prisoners bearing the same or similar names are included in one trial, care should be taken, in recording the evidence given by each witness, to specify the name of the father of the person alluded to, whenever the name of any one of them is mentioned. C. O. No. 135 of vol. 2, and No. 2, Feb. 7, 1856. *L. P.*

Uniformity to be observed in spelling the names of prisoners; and father's name to be added, if two prisoners bear the same name.

1211. In writing the native names of men and places, the orthography of the original is to be adhered to as closely as possible. C. O. No. 104 of vol. 2.

Orthography of native names.

1212. After all the evidence for the prosecution and defence has been heard, the law officer (who is to be present during the whole of the trial) is to write at the end of the record of the proceedings the *futwa* or law as applicable to the circumstances of the case, and to attest it with his seal or signature. The judge is attentively to consider such *futwa*, and if it appears to him consonant to natural justice, and also conformable to the Mahomedan law, he is to pass sentence in the terms of the *futwa* (except in cases in which he is expressly directed not to pass sentence), and to issue his warrant to the magistrate for the execution of it without further reference or delay. Provided, however, that in all cases where a prisoner is condemned by such sentence to suffer death, or imprisonment for life, the court is to transmit a copy of the sentence, and of all the papers and proceedings read or recorded during the trial, to the *nizamut adawlut*, and is not to execute such sentence, but is to wait the final sentence of that court.* *Beng. Reg.* IX. 1793, sect. 47. *Ced. Prov. Reg.* VII. 1803, sect. 15, cl. 1.

SENTENCE.

After all proceedings held, the law officer is to record the *futwa*, and the judge to pass sentence, and in certain cases to refer.

* As regards sentences see section "of *futwas* and sentences;" and as regards reports of trials to *sudder court* see section "of trials referred and called for."

1213. A conditional sentence of acquittal cannot be passed, so as to render the prisoner liable to a second trial in the event of further evidence being procurable. *N. A. R.* vol. 5, page 25.

Conditional sentence of acquittal cannot be passed.

1214. A prisoner may be convicted as an accomplice when arraigned as a principal; or of a less offence, when under arraignment for a greater of the same nature and founded on the same facts; but not if the crime established be totally unconnected with that charged against the prisoner. Nor can a conviction of a graver offence be had upon a charge of a less heinous nature; as, when a prisoner had been committed on a charge of "severe wounding," it was held that he could not be convicted of "wounding with intent to murder"; and in this case the court, being of opinion that he ought to have been committed on the latter charge, annulled the former commitment and proceedings on the trial, and ordered him to be committed and tried *de novo* for the offence of "wounding with intent to murder." *N. A. R.* vol. 1, page 257; and vol. 4, page 59.

Conviction as accomplice may be had on commitment as principal; and of less on graver charge; but not for graver on less.

Example.
See paras. 1006 et seq.

1215. So, when the term used in the indictment was *hulakut*, or homicide; and the offence charged was described as manslaughter in the margin of the letter of reference; and it appeared that the prisoner had been irregularly tried on a charge of murder, of which

So, a conviction of murder cannot be had upon a charge of manslaughter.

offence the judge deemed him convicted; the proceedings were returned with directions that the trial should be held in the mode prescribed for that offence, and that a fresh answer should be taken from the prisoner as to the murderous intent charged, and a fresh futwa from the law officer as to that point. It was not considered necessary to take any new evidence for the prosecution; but the prisoner was permitted to summon any other witnesses in his own defence. *N. A. R.* vol. 3, page 188.

So, in no case can a prisoner be convicted of a crime to the charge of which he has not pleaded;

1216. The same principal, viz. that a prisoner cannot be convicted of a crime with which he was not charged, and to which therefore he has not pleaded, although the conviction was founded on the same transaction as that which gave rise to the charge, was acknowledged in the cases of prisoners charged—with forgery, and convicted of fraud; [*N. A. R.* vol. 2, page 50.]—with perjury, and convicted of embezzlement; [*N. A. R.* vol. 3, page 234.]—with embezzlement, and convicted of obtaining money under false pretences; [*Reports L. P.* 1852, part 1, page 112.]—with procuring abortion, and convicted of causing the death of her infant by exposure; [*N. A. R.* vol. 3, page 56.]—with theft attended with severe wounding, and convicted of affray; [*N. A. R.* vol. 4, page 246.]—with culpable homicide, and convicted of being an accomplice in an affray; [*N. A. R.* vol. 5, page 28.]—with murder, and convicted of conspiracy; [*N. A. R.* vol. 3, page 50.]—with murder, and convicted of theft attended with murder. [*N. A. R.* vol. 5, page 53.] So, a conviction of procuring abortion cannot be had on a charge of culpable homicide, unless it be averred that the death was the result of the attempt to procure abortion. [*N. A. R.* vol. 6, page 277.]—If the facts or nature of the crime proved are different from those on which the prisoner was arraigned, it would be unjust to convict him, because he has had no opportunity of defending himself. [*Const. No.* 123.]—For the same reason, when a session judge, in calling upon a prisoner to plead, omitted to state to him that part of the charge which denoted the aggravating circumstances of the crime, it was held that the prisoner could be convicted only of that part of the charge to which he was called on to plead. [*N. A. R.* vol. 5, page 162.]

unless the offence proved is essentially of the same nature as that charged.

1217. But a prisoner charged with the illegal and violent seizure and appropriation of property, was convicted of theft, because the offence proved was essentially the same as that charged. [*Reports W. P.* 1854, part 1, page 142.] And, on the same principle, a prisoner was convicted of forgery on a charge of conspiracy to defraud by falsifying documents; [*N. A. R.* vol. 1, page 365.] and a conviction was had of embezzlement, when the charge was of theft and knowingly retaining stolen property. [*N. A. R.* vol. 4, page 152.]

Prisoner acquitted on account of erroneous charge, may re-committed on correct charge.

1218. And the discharge of a person without punishment on account of the erroneous framing of the charge, does not exempt him from punishment. He is still liable to be tried for the offence of which he appears to have been guilty. *N. A. R.* vol. 2, page 50.

Judge to state on which counts he convicts;

1219. Where the accused is committed on more than one count, the judge should be careful to specify distinctly in the vernacular proceeding the particular count, the averments of which he conceives to have been established on the trial. *C. O.* No. 54 of vol. 4. *L. P.*

1220. When the prisoner is convicted of being an accessory, the judge should state distinctly in the vernacular proceeding and in the English statement whether the conviction is of being accessory before or after the fact. Reports *L. P.* 1852, part 1, page 367.

And if he convicts as accessory, whether as before or after the fact.

1221. If the magistrate has neglected to obey any requisition, which the judge has made to him as being necessary to the due conduct of any pending trial, the judge is at liberty to represent the circumstance to the nizamat adawlut, either in the remarks on the statements of convictions or acquittals, or in a separate letter. Reg. VII. 1831, sect. 9.

Neglect of magistrate to obey the requisition of judge.

1222. In like manner, should the judge, in the conduct of a trial, see reason to impute misconduct to any darogah or other subordinate police officer, he is at liberty to certify the same to the commissioner of circuit, for such orders as the latter may deem necessary, intimating to the nizamat adawlut his having made such reference to enable that court to require from the commissioner, should they think proper, a report of what he may have done in pursuance of the reference, and to make a special report on the subject to government, should the circumstances of the case seem to require it. Reg. VII. 1831, sect. 10.

Misconduct of police.

1223. A session judge holding a jail delivery, or the court of nizamat adawlut, may order the dismissal of any native officer convicted of a criminal offence declared punishable by dismissal from office; or, though not so expressly declared, if the conduct of such native officer appears from any proceeding before the sessions court or nizamat adawlut, to be such as to require his removal from the public situation held by him. On the same being notified to the magistrate, or other European public officer, under whom the native officer so dismissed has been employed, it is the duty of the magistrate, or other European officer, to take measures for the appointment of a successor to the vacant office in conformity with the regulations. Reg. XXV. 1814, sect. 15. Reg. XVII. 1816, sect. 7, cl. 8.

The courts of sessions and nizamat adawlut may order the dismissal of any native officer whose conduct appears, from any proceeding in trials before them, to require his removal.

1224. Under the above provisions, in cases before the sessions court as trials, the session judge is competent to order the dismissal of police officers convicted of any offence, which appears to require their removal from public office. Const. No. 1328.

1225. It is competent to a session judge to fine an officer of the magistrate's establishment guilty of negligence or disrespect while in attendance at the sessions. Const. No. 882.

Judge may punish the magistrate's omah.

1226. It is also the duty of the session judge to bring to the notice of the nizamat adawlut any irregularities, which may have marked the conduct of the proceedings in the preliminary investigation of the magistrate or the police. C. O. No. 54 of vol. 2, para. 12. He is also to take notice of any want of observance of the rules laid down for the guidance of police officers in drawing up their reports. Reports *W. P.* 1853, part 2, page 1369.

Judge to notice irregularities.

1227. A session judge was told that it would have been more consistent with judicial usage, if he had abstained from expressing a decided opinion as to the guilty knowledge and complicity of persons, who were not on trial before him. In reporting a trial, a session judge should ordinarily confine himself to the case of the prisoners as it comes before him, and forbear from hazarding conjectures, as to the criminality of individuals, when their conduct has not been impeached by the magistrate, to whose judgment and local experience, in selecting

In reporting a sessions trial judge should not remark on the guilt knowledge or complicity of persons not on trial before him.

the objects of a criminal prosecution, much latitude should be allowed. Reports *W. P.* part 2, page 531.

Rules for drawing up final roobakaree of sessions trial.

1228. The final roobakaree drawn up at the end of a sessions trial is to be preserved for purposes of record, and should therefore contain sufficient information of the nature of the case for the purposes of future reference. It ought to show on what charges the prisoners were arraigned; the names of all the prisoners; the verdict of the jury; the assent or dissent of the session judge; and the order of punishment, acquittal, or reference to the nizamat adawlut. It should be in the prescribed form, and should be drawn up on a separate paper, which may be preserved when the rest of the record is destroyed. C. O. No. 1128, August 22, 1855. *W. P.*

Proceedings of magistrate to be returned.

1229. The session judge is not to retain the proceedings of the magistrate in trials committed to the sessions, except in particular cases, in which such measure appears essentially necessary, when he may either detain the original proceedings, or require copies. C. O. No. 61 of vol. 1.

Judge to forward abstracts of trials to commissioner who is to send them to magistrate.

1230. The office copies of the session judge's abstracts of trials, both of conviction and of acquittal, are in the *Western Provinces* to be forwarded to the commissioners; and are, after perusal, to be sent by him to the magistrate with strict injunctions to return them to the judge within three days from the date of receipt. Government Order *W. P.* No. 4252, October 17, 1855.

If the magistrate wishes to see the evidence taken before the sessions court,

1231. If in particular cases of trials committed to the sessions, any special grounds exist rendering it desirable, in the opinion of the magistrate, that he should see any part of the evidence which has been taken before the sessions court, either to enable him to follow up his enquiries in the case, or for any other purpose connected with the administration of criminal justice, or of the police of his district, he should state those grounds fully in a report to the session judge, who, on a consideration thereof, will determine on the propriety or otherwise of complying with the application, either by transmitting for the magistrate's perusal transcripts of the depositions required by that officer, or by allowing an officer from his court to attend for the purpose of taking copies of the same. C. O. No. 5 of vol. 3.

Sufficiency of ground of commitment.

Judge to record his opinion;

but not to communicate it to the magistrate.

1232. In cases of acquittal, the judge is required to specify in that column of the statement of acquittals appropriated to remarks, whether he deems the commitment to have been made on sufficient grounds, and after due inquiry into the case by the magistrate; or whether he considers it to have been erroneous or defective: and, in the latter case, he is distinctly and fully to detail the ground on which he has come to such conclusion, mentioning the name of the committing officer. He is not, however, to communicate his sentiments to such officer; but should leave it to the nizamat adawlut to point out such cases as really call for notice. C. O. Nos. 24, 156, and 168 *L. P.* of vol. 2.

If proceedings of magistrate require notice, copy of roobakaree of commitment to be sent.

1233. In such cases, when the commitment appears to have been made on inadequate grounds, and when the proceedings of the magistrate in making the commitment appear to merit the particular notice of the nizamat adawlut, a copy of the magistrate's roobakaree of commitment written upon foolscap paper of English manufacture, is to be forwarded

with the usual sessions statements. C. O. No. 24 of vol. 2; and Nos. 36, 50, *L. P.* and 57 of vol. 3.

1234. In all cases of prisoners punished or acquitted without reference, copies of the futwas are to be furnished to the nizamat adawlut. They are to be filed in two separate parcels, in the order in which the prisoners affected by them stand on the statements of prisoners punished without reference and acquitted; and on the face of each futwa a memorandum is to be written in the vernacular, showing the names of the prisoners, their numbers as they stood in the magistrate's calendar, and their numbers in the respective statements of convictions and acquittals, according to the forms given below. (a) The specific charge, upon which the prisoner has been committed to take his trial, is also to be noted upon the copy of the futwa; the charge is to be taken from the magistrate's roobakaree of commitment, without any alteration, and written upon the face of the futwa in the same language as the original. If in one case some of the prisoners are acquitted, and some convicted, a copy of the futwa is to be filed with each parcel. C. O. Nos. 263 and 283 of vol. 1; No. 78 of vol. 2; and No. 25 of vol. 3.

Copies of futwa.

In cases completed without reference, copies of futwas are to be forwarded monthly to the nizamat adawlut.

1235. Copies of futwas and verdicts of assessors, or copies of the magistrate's roobakarees of commitments, forwarded with the monthly sessions statements are to be written upon foolscap paper of English manufacture. C. O. No. 50 of vol. 3. *L. P.* The vernacular statement of the verdicts of assessors and jurors is no longer required in the *Western Provinces*. C. O. No. 114 of vol. 4. *W. P.*

Such copies to be written on English foolscap.

1236. Whenever there appears to be sufficient cause for dispensing with the attendance and futwa of the law officer of the sessions court upon a criminal trial, or trials, to be held before such court, it is competent to the executive government for the time being to order the same; and an official communication of such order by a secretary to government is to be deemed sufficient authority for the trial, or trials, therein referred to, being held before the session judge without the attendance or futwa of the law officer. Reg. I. 1810, sect. 2.

Trials held without law officer.

Futwa may be dispensed with by order of government.

1237. In such cases no sentence is to be passed by the session judge. But the proceedings on the trial, when completed, are to be transmitted, with the opinion of the judge on the evidence and facts established, for the sentence of the nizamat adawlut. Reg. I. 1810, sect. 3.

In such cases, trial to be referred without sentence.

(a) Form of the memorandum for futwas of conviction.

نمبر اٹامیان در فہرست اٹامیان	نمبر فلان کلندره ضلع فلان
کہ بموجب حکم صاحب دورہ سزا یافتند	بابت دورہ فلان سنہ فلان
نمبر فلان	نام اٹامیان

Form of the memorandum for futwas of acquittal.

نمبر اٹامیان در فہرست اٹامیان	نمبر فلان کلندره ضلع فلان
کہ بموجب حکم صاحب دورہ رہائی یافتند	بابت دورہ فلان سنہ فلان
نمبر فلان	نام اٹامیان

Questions of Mahomedan law in such cases.

1238. In the event of any question of Mahomedan law arising upon such trials, the same is to be recorded upon the proceedings for the information and decision of the nizamut adawlut. But if the question refer to the competency of a witness, such witness is to be examined, leaving the admission or ultimate rejection of the testimony so given to the consideration of the nizamut adawlut. Reg. 1. 1810, sect. 4.

Authority for holding trial out of ordinary course to be recorded.

1239. In all cases of trials held in any way out of the ordinary course of law, the judge is to record on the proceedings of the trial the original documents authorizing the course adopted (substituting attested copies in their place in the magistrate's nuthee, if they are taken therefrom); and he is invariably to notice the same in his letter accompanying the proceedings on the trial, if referred to the nizamut adawlut. C. O. No. 54 of vol. 2, para. 23.

Judge to note, on the record of trials held without law officer, the law applicable to it.

1240. Session judges, who try a case without the aid of a law officer or assessors, are required to note on the face of the record the Regulation or Act under which the trial is held. C. O. No. 215 of vol. 3. *L. P.*

Session judge may avail himself of the assistance of natives as

1241. It is competent to any court of criminal justice, in which a commissioner of circuit or judge of sessions presides, without the necessity of any special authority from government, to avail itself of the assistance of respectable natives in either of three following ways:

a panchayat,

First, by referring the case, or any point or points in the same, to a panchayat of such persons, who are to carry on their enquiries apart from the court, and report to it the result. The reference to the panchayat and its answer are to be in writing, and are to be filed in the case.

or assessors,

Secondly, by constituting two or more such persons assessors, or members of the court, with a view to the advantages derivable from their observations, particularly in the examination of witnesses. The opinion of each assessor is to be given separately, and discussed; and if any of the assessors, or the authority presiding in the court, desires it, the opinions of the assessors are to be recorded in writing in the case.

or a jury.

Or thirdly, by employing them more nearly as a jury. They are then to attend during the trial of the case; to suggest as it proceeds such points of inquiry as occur to them, the court, if no objection exists, using every endeavour to procure the required information; and after consultation to deliver in their verdict. The mode of selecting the jurors, the number to be employed, and the manner in which their verdict is to be delivered, are left to the discretion of the judge who presides.

In such cases futwa need not be taken; but if not, and the crime be not specifically within the judge's competence, the case is to be referred.

In all trials in which recourse is had to the above provisions, the futwa of the Mahomedan law officer is unnecessary, and may be dispensed with at the option of the court. Provided that whenever the futwa is dispensed with, and the crime of which the prisoner is convicted be one, which the judge is not specifically empowered by the regulations to punish, he is not to proceed to pass sentence, but is to refer the case for the consideration of the nizamut adawlut, stating at length in the proceedings the opinion of the panchayat, assessors, or jury, and his own opinion as to the crime proved, and the nature and extent of the punishment which should be awarded. Reg. VI. 1832, sect. 4, cl. 1.

But in all such cases the decision is vested in the judge.

1242. It is clearly to be understood, that under all the modes of procedure prescribed above, the decision is vested exclusively in the officer presiding in the court, provided that

the sentence be one which, under the existing regulations, it is within his competency to pass. Reg. VI. 1832, sect. 4, cl. 2.

1243. The condition of reference to the court set forth in the above provisions, viz. the crime of which the prisoner is convicted being one which the judge is not specifically empowered by the regulations to punish, must be held to relate to the nature of the crime; and, since whatever is defined or specified in the regulations to be a crime is specifically punishable by the criminal courts, the session judge is therefore specifically empowered to punish such offences when brought before him in the due course of law. The real object of the legislature in enacting the above provision appears to have been to declare the incompetency of the sessions court, unassisted by a Mahomedan law officer, to declare that to be a crime which is not so declared by the regulations. The law professedly administered is the Mahomedan law, amended and modified by the regulations. Where the amendments are applicable, there can be no difficulty in disposing of trials; but, in the contrary event, an exposition of the Mahomedan law is necessary to pronounce whether the act of the prisoner is punishable or otherwise. The session judge sitting with assessors has not the benefit of such exposition, and hence the necessity and propriety of a reference to the nizamut adawlut. C. O. No. 55 of vol. 3.

Explanation of the above as regards the condition of reference.

1244. Any person, not professing the Mahomedan faith, when brought to trial on a commitment for an offence cognizable under the general regulations, may claim to be exempted from trial under the provisions of the Mahomedan criminal code; and in such case the commissioner of circuit, or judge of sessions, presiding on the trial, shall comply with such requisition, and shall proceed in one of the three modes prescribed above, at the same time dispensing with the futwa of the Mahomedan law officer. Reg. VI. 1832, sect. 5.

Any person, not a Mahomedan, may claim to be tried by a jury, &c.

1245. Trials, in which the religious prejudices of Mahomedans or any other class are concerned, ought in all possible cases to be conducted without the Mahomedan law officer, and with the assistance of a jury under the above provisions. A futwa on any point of Mahomedan law may, if necessary, be required without the attendance of the law officer on the trial. C. O. No. 181 of vol. 2. *W. P.*

Trials involving

1246. The law does not require that the opinion of each assessor should be *recorded* separately, or indeed that any of them must be recorded in writing, unless particularly so desired by the assessor or the judge. But a roobakaree or written proceeding ought always to be filed in the record of the trial, appointing assessors or jurors, and distinctly stating the clause of the law under which they are appointed, and are to take a part in the trial. And, in the case of assessors, the record of the trial should contain a clear statement that the assessors gave their opinions separately, and that the opinions were discussed, and then recorded at their desire or that of the judge. Reports *L. P.* 1852, part 1, page 60.

The opinions of assessors need not be recorded in writing.

1247. A difference of opinion between the presiding officer and the jury or assessors does not render a reference to the nizamut adawlut necessary; but the presiding officer is competent and required to pass final sentence under such difference of opinion under the same restrictions only as limit the issue of his sentence when he concurs in the verdict. Const. No. 783.

If judge differs from assessors, case need not be referred.

Case begun with law officer cannot be continued with assessors.

In a postponed case if jurors cannot be re-assembled, new jurors to be appointed.

But they must hear the case *ab initio*.

The services of natives in such capacity cannot be compelled.

East Indians may serve as jurors.

From what classes jurors ought to be selected.

1248. A trial having been commenced with the aid of the law officer, the judge cannot call in the aid of a panchayat. Const. No. 835.

1249. In the case of a postponed trial commenced before a jury, where it is impracticable from death or other cause to procure the attendance of all persons composing the jury, new jurors should be appointed in the room of those whose attendance cannot be procured, and the former evidence should be read over to them. Const. No. 828.

1250. But in a case in which the prisoner was tried on five different counts by assessors sitting with the session judge; and after the plea of the prisoner was recorded, and witnesses examined in support of the three first of them, the session judge called in other assessors in consequence of the illness and inability to attend of the assessors who first sat; and in which on the completion of the trial, the verdict on the three first counts was delivered by the first set of assessors, and on the remaining two counts by those who last sat; it was held that the employment of two different sets of assessors, under the circumstances, was illegal. N. A. R. vol. 5, page 87.

1251. No power is given to the judge by the above provisions to compel the attendance of persons, who are reluctant voluntarily to render their services. He is empowered to invite the services of natives as arbitrators, assessors, or jurors, but by no means to compel them. There are always officers of respectability attached to the court, law officers, sudder ameens, or principal sudder ameens, who can be invited to act as assessors, and on whose part there can be no reasonable ground for declining compliance with such an invitation. C. O. No. 127 of vol. 2.

1252. An East Indian, who by reason of his descent is not a British subject within the meaning of the existing laws, is eligible to be employed as a juror or assessor on the trial of a native of India, whether of Hindoo or Mahomedan persuasion, or of persons belonging to the same class as himself. Const. No. 1019.

1253. It is, in the opinion of the court, highly inexpedient to compose a jury entirely of vakeels, and mokhtars, or of less than three persons. C. O. No. 52 of vol. 4, para. 7. *W. P.* The best jurors, if they can read and write, are men from the mofussil, ignorant of the chicanery and practice of the courts. The duty should be made as little irksome as possible; and the leading zumeendars of wealth and local influence should be induced to render assistance on special occasions. C. O. Govt. Bengal, No. 27, July 7, 1855. C. O. No. 18, July 9, 1855. *L. P.*

SECTION XXV.

OF POSTPONED TRIALS.

Trial may be twice postponed for want of evidence.

1254. If the attendance of any witness on the part of the prosecutor or the prisoner, whose evidence the law does not allow to be taken by commission, cannot be procured, or if any witness cannot be found, the judge may postpone the trial (until the next circuit), provided there appears sufficient cause for so doing. If the attendance of such witness cannot then be procured, or if he has not been found, the judge may in like manner postpone the trial a second time. But if the judge and his law officer are of opinion that the evidence of

any witness or witnesses, who are absent, is not necessary, they are to complete the trial without it. *Beng. Reg. IX. 1793, sect. 49. Ced. Prov. Reg. VII. 1803, sect. 17.*

1255. As it may frequently occur, that a trial postponed by one judge for further evidence is concluded before another judge, it is incumbent on the former to record his reasons at large for directing the postponement, with the specific points on which further evidence is required, and any observations upon the credit of the witnesses already examined, or other remarks upon the evidence already taken, which may appear requisite for the information of the latter. C. O. No. 111 of vol. 1.

Judge to record his reasons for postponing.

1256. When a trial is postponed, the cause of postponement should be entered on the proceedings. N. A. R. vol. 6, page 18.

Fact of postponement to be recorded.

1257. When the trial was commenced by one session judge, and all the evidence was recorded before him, except as to an *alibi* pleaded by one prisoner; and the judge considering that this *alibi*, if established, might shake the credibility of the direct evidence against a number of the other prisoners, postponed the trial as respected all those prisoners; and placed on record his reasons for postponement, recording also in the office a full statement of his view of the evidence already taken respecting the prisoners for the information (as he was himself about to leave the station) of the judge who would have to take up the postponed case; and the judge succeeding him took the fresh evidence that had been called for in open court in the presence of the prisoners; and then having read the whole record of evidence previously taken, with the former judge's recorded remarks, proceeded as usual;—the court held that the mode of procedure was strictly legal. N. A. R. vol. 6, page 165.

Mode of procedure, if a trial be commenced by one judge and postponed, and be subsequently taken up by another judge.

1258. There is no rule or order which requires that, in cases of the non-attendance of the prosecutor before the sessions court, the trial must be postponed for two successive sessions, and the prisoner not discharged until the prosecutor fails to attend at a third session. The provisions of the regulations above quoted are expressly applicable to witnesses only; and with regard to them a discretion is vested in the judge to postpone the trial or not, according as he and the law officer are of opinion that the evidence of the absent witnesses is necessary or otherwise. With regard to the case of absent prosecutors, for which there is no express rule in the regulations, a discretion should be exercised by the judge according to the nature and circumstances of each case: if both prosecutor and witnesses are absent from any cause which is not likely to prevent their attendance at a future period, the trial should be postponed, the magistrate being directed to adopt every practicable measure for causing their attendance, and the prisoner be admitted to bail, or kept in custody, as the judge under cl. 2, sect. 9, Reg. IX. 1807 may deem it proper to direct: but if there is no prospect of the future attendance of either prosecutor or witnesses in support of the prosecution, the prisoner should be acquitted, and discharged with or without security, as may appear proper in consideration of the magistrate's proceedings on the commitment. If, however, the prosecutor only is absent, and his witnesses in attendance, the judge should instruct the magistrate to appoint some person on the part of government to conduct the prosecution. A judge on circuit may direct the removal of a trial with the prisoner, prosecutor, and witnesses, to another station of jail delivery, if he see urgent and special grounds for directing such mode of procedure. C. O. No. 199 of vol. 1. Const. Nos. 200 and 256.

Rules for procedure in the absence of the prosecutor, or of both the prosecutor and witnesses.

Trial not to be postponed for more than six months.

1259. No criminal trial is to be postponed by a session judge beyond the session of jail-delivery, which may be held next after the expiration of the period of six months from the date of commitment, except when, for special reasons, the session judge may be of opinion, that it should be again postponed; when he will report the circumstances under which it has already been postponed, and the grounds on which he has formed his opinion, for the orders of the nizamut adawlut. C. O. No. 132 of vol. 2; and No. 45 of rules for session judges in Appendix D.

Judge on circuit to take up first the postponed cases; and to require from magistrate an explanation of the cause, if there is any delay.

1260. At the commencement of each session the magistrate is to lay before the judge a statement of all cases, which have been referred back by the nizamut adawlut for further inquiry or information, as also all trials which have been postponed at the preceding session; and the judge is immediately to proceed on trials of this description, supposing of course the further investigation to have been completed by the magistrate, and the trials to be in every respect ready, in preference to the cases included in the magistrate's regular calendar, forwarding such as are referrible to the nizamut adawlut with the least practicable delay. If the magistrate has not held the further inquiry required, the judge is to call upon him for an explanation of the cause of delay; and in cases referred back by the nizamut, the magistrate's explanation with the judge's opinion of the sufficiency or otherwise of the same is to be forwarded for the information and orders of that court. A similar report is to be made in other cases, when the judge considers it necessary to bring the magistrate's conduct on the occasion under the notice of the court. C. O. Nos. 121 and 153 of vol. 1.

Suggestion for avoiding delay in the final disposal of cases.

1261. A judge on circuit should, whenever practicable, try those cases first, which have had rise at the greatest distance from the sudder station, in order that whenever any more witnesses or inquiries are requisite to complete the trials, there may be time for a reference to the thanadar, before the nearer commitments are finished. C. O. No. 173 of vol. 1.

SECTION XXVI.

OF FUTWAS AND SENTENCES.

Futwa.

May be required from law officer though absent.

Magistrate may require in case of doubt.

1262. A futwa on any point of Mahomedan law may, if necessary, be required without the attendance of the law officer on the trial. C. O. No. 181 of vol. 2. *W. P.*

1263. In any case of doubt, when the regulations contain no specific enactment on the point in question, the magistrate should take a futwa from the law officer, and proceed in conformity with his exposition of the Mahomedan law. Const. No. 891.

The interference of the magistrate with futwas delivered before the sessions is improper.

1264. It was considered highly improper and unjustifiable in a magistrate to direct the government pleader to communicate with the law officer, over whom, in his capacity of law officer of a court of circuit, he had no control, on a matter relating to a futwa delivered in a trial before the court of circuit. Const. No. 631.

The law officer is to specify the crime of which the

1265. Law officers are to be careful to specify in their futwas the crime, which they consider to be established against a prisoner declared liable to punishment, whether the

conviction be founded on full legal proof, or on presumptive evidence; and to use the proper term, which has been appropriated in the Mahomedan law, or by usage, to designate the offence of which the prisoner is convicted. As, for instance, the crime of robbery should not be denominated *gharutguree*, as that is an ambiguous term which might be applied to acts of plundering distinct from robbery. C. O. Nos. 101 and 104 of vol. 1.

prisoner is convicted; and to use the proper term.

1266. The judge should always require a more specific futwa from the law officer as to the nature and degree of *shoobuh* established against a prisoner, whenever the original futwa in the case is doubtfully expressed. C. O. No. 117 of vol. 1.

Law officer to specify the degree of presumption.

1267. A futwa convicting upon strong presumption (*zun-i-ghalib* or *shoobuh-i-curvee*) is a futwa of conviction: and a session judge concurring in such conviction in a case of burglary or theft attended with murder, or wounding or corporal injury endangering life, must pass sentence of 39 stripes and imprisonment in transportation for life, and refer the trial to the nizamat adawlut, suspending the issue of his sentence. Const. No. 558.

A futwa of strong presumption is a futwa of conviction.

1268. A law officer having declared in his futwa, as a ground for the acquittal of a prisoner, that he might have concealed his knowledge of a dacoity from fear, and that it was inexpedient to punish him, lest it should deter other offenders from giving information, the nizamat adawlut held that he had exceeded his duty, and that he should not have referred to matters having no connection with Mahomedan law. N. A. R. vol. 2, page 142.

Law officer may not refer to matters having no connection with Mahomedan law;

1269. In a trial for perjury, it was held that the futwa of the law officer, convicting the prisoners of different degrees of guilt and consequently awarding a different amount of punishment to each, was not objectionable on that score; neither was it impugnable on the ground of its specifying *tazeer* with *tusheer* as the nature of the penalty incurred, inasmuch as by the Mahomedan law *tusheer* forms part of the punishment of perjury. N. A. R. vol. 5, page 58.

but may define the different degrees of guilt of the prisoners; and the mode of punishment prescribed by Mahomedan law.

1270. On trials for murder, the law officers are to deliver their futwa, or law opinions, upon the case according to the doctrines of Yoosuf and Mahomed. Beng. Reg. IX. 1793, sect. 50. *Ced. Prov. Reg.* VII. 1803, sect. 19.

In cases of murder, futwas to be given according to the two disciples.

1271. Under the Mahomedan law a futwa of death by *seasut* cannot be pronounced on any but a murderer, though some authorities recognize, in abstract terms, the right of the ruling power to extirpate evil doers generally. N. A. R. vol. 2, page 418.

A futwa of death by *seasut* cannot be pronounced on any but a murderer.

1272. In all sentences of punishment passed by the sessions court, the judge is to transmit to the magistrate, with the warrant for the execution of the sentence, a copy of the futwa delivered by his law officer: and, in the case of sentences passed by the nizamat adawlut, a copy of the futwa of the law officers of that court. C. O. No. 185 of vol. 1.

Copy of futwa of conviction to be sent to magistrate.

1273. The law officer of the sessions court is always to be furnished with a copy of any futwa delivered by the law officers of the nizamat adawlut in cases referred to that court. C. O. No. 101 of vol. 1.

Copy of futwa of law officers of nizamat to be sent to law officer of sessions court.

1274. A session judge has no authority to alter his sentence once passed; he must report the case for the consideration and orders of the nizamat adawlut. Const. Nos. 629 and 643.

Sentences, character of.
Sentence once passed cannot be altered.

Sentence to be passed in the most public manner.

1275. The session judges should invariably make it a rule to pass sentence upon prisoners in the most public manner, and to explain to them the enormity of their crimes; and they should take the opportunities thus presented to them in crowded courts of explaining the provisions of such penal enactments, as may have been recently passed by the government, and are but imperfectly known or understood by the community. C. O. No. 160 of vol. 1.

The regulations supersede Mahomedan law.

1276. In cases where a stated penalty is prescribed for an offence, as well by the regulations as by the Mahomedan law, the provisions of the latter are superseded. N. A. R. vol. 1, page 262.

A promise not to prosecute does not bar a capital sentence.

1277. A promise made by the prosecutor not to prosecute was not considered sufficient to bar a capital sentence in a case of murder, as such promise did not affect the credibility of the evidence generally. N. A. R. vol. 2, page 96; and vol. 3, page 69.

Capital sentence not usual, if body be not found.

1278. It is not usual to pass sentence of death, when the body of the murdered person has not been found; but a capital sentence has been passed when the fact of his death is well established, and the disposal of the body satisfactorily accounted for. Reports *L. P.* 1851, page 171; 1852, part 2, page 893; and 1856, part 1, page 830.

The punishment of mutilation is not to be adjudged - rules for commutation.

1279. No criminal is to suffer the punishment of mutilation. If a prisoner is sentenced, in conformity with the *futwa* of the law officer, to lose two limbs, instead of being made to undergo such punishment, he is to be imprisoned and kept to hard labor for fourteen years; and if any prisoner is so sentenced to lose one limb, he is, in lieu of such punishment, to be imprisoned and kept to hard labor for seven years. The judge, accordingly, when any prisoner is sentenced to suffer mutilation, is to commute such punishment for imprisonment and hard labor for the term above prescribed, and to issue his warrant to the magistrate for that purpose. *Beng. Reg.* IX. 1793, sect. 51. *Ced. Prov. Reg.* VII. 1803, sects. 20 and 21.

Judge may exempt from labor.

1280. A session judge may insert an exemption from hard labor in the warrants issued by him to the magistrate in cases wherein, on consideration of the rank or situation in life of any person sentenced to imprisonment, he considers him to be an improper subject for hard labor. C. O. No. 44 of vol. 1.

If judge tries case within the competence of the magistrate, he should confine his award within the limits prescribed to the latter.

1281. When the session judge quashed a conviction by the magistrate on the ground that the offence charged was beyond his competence, and directed the commitment of the prisoner to the sessions, when in fact the magistrate was quite competent to dispose of the case himself, the court reduced the order of the sessions court by re-affirming the order of the magistrate. Reports *L. P.* 1852, part 1, page 211. See also para. 1005.

The measure of the sentence should not depend on the fullness or incompleteness of the proof.

1282. In a trial for murder the session judge recommended a sentence of 14 years' imprisonment. The court observed that the reason for proposing a punishment so disproportionate to the offence was not apparent, unless the judge had suffered misgivings of the prisoner's guilt to qualify the measure of the sentence. Such practice is not to be justified on any sound principle. Incompleteness of proof of guilt does not render a prisoner an object of lighter punishment than ordinary; it entitles him to his unconditional release. Reports *W. P.* 1851, page 92. A doubt regarding the trustworthiness of the evidence

may be a reason for its total rejection; but is no ground for a mitigation of punishment. Reports *W. P.* 1856, part 1, page 122.

1283. Whenever a session judge proposes a sentence of perpetual imprisonment in the Alipore jail, he is to record his reasons for not recommending a sentence of transportation for life. Under C. O. No. 130 of vol. 3, *L. P.* the judge was directed invariably to recommend transportation for life instead of imprisonment for life; but this rule is no longer required to be observed, in consequence of the enactment of Act XIV. 1844, which authorizes a single judge of the sudder court to pass sentence of transportation beyond sea for life against a prisoner recommended to be imprisoned for life. C. O. No. 229 of vol. 3. *L. P.*

1284. On trial, the session judge is attentively to consider the futwa, placed on record by the law officer, and if it appears to him consonant to natural justice, and also conformable to the Mahomedan law, he is to pass sentence in the terms of the futwa (except in cases in which he is expressly directed not to pass sentence) and to issue his warrant to the magistrate for the execution of it without further reference or delay. Provided, however, that in all cases where a prisoner is condemned by such sentence to suffer death, or imprisonment for life, the judge is to transmit a copy of the sentence, and of all the papers and proceedings read or recorded during the trial to the nizamat adawlut, and is not to execute such sentence, but to wait the final sentence of that court. *Beng. Reg.* IX. 1793, sect. 47. *Ced. Prov. Reg.* VII. 1803, sect. 15, cl. 1.

1285. It is competent to a session judge to refer to the nizamat adawlut any trial in which he considers the sentence, he is empowered to pass, inadequate to the guilt of the prisoner, anything in the existing regulations to the contrary notwithstanding. Act XXXI. 1841, sect. 6. *Reg.* VI. 1831, sect. 12. In such case he is not to pass sentence. Reports *W. P.* 1854, part 2, page 747.

1286. When the judge disapproves of any part of the proceedings held on a trial, or of the futwa delivered by the law officer, he is not to pass sentence in such cases, but is to complete the trial, and transmit to the nizamat adawlut a copy of all the proceedings, and the futwa of the law officer, with a separate letter stating the grounds of his disapproval, and wait the sentence of that court. *Beng. Reg.* IX. 1793, sect. 53. *Ced. Prov. Reg.* VII. 1803, sect. 22.

1287. In a case, in which the futwa convicted the prisoners of *shibeh-umd* and declared them liable to *deyut*, the session judge, considering the prisoners guilty of aggravated culpable homicide, referred the case. The nizamat adawlut held that the common acceptance of the term *shibeh-umd* is culpable homicide; and that the difference of opinion in regard to the aggravation was not a legitimate ground of reference. *N. A. R.* vol. 5, page 63.

1288. It is not a legitimate ground of reference that the judge and law officer differ in regard to the degree of guilt of the prisoners, as no distinction between principals and accomplices is recognized in the regulations, accomplices being liable to the same punishment as principals. Reports *L. P.* 1852, part 1, page 394.

1289. In a case of dacoity attended with murder, in which the principals had been previously convicted and sentenced by the nizamat adawlut it was held unneces-

In sentences of perpetual imprisonment, the judge is to record his reasons for not proposing transportation for life.

Sentences, mode of, and referrible trials.

Sentence to be passed in the terms of the futwa.

If futwa adjudges death, or imprisonment for life, case to be referred.

Judge may refer any case in which he considers the sentence within his competence inadequate.

If judge proves exceeding futwa, he is not to pass sentence, but to refer.

A difference of opinion as to the aggravated character of an offence is not a sufficient ground of reference.

Difference between judge and law officer as to degree of guilt no ground of reference.

Judge may sentence persons convicted of privacy

the principals having been already sentenced by the nizamat.

Recapitulation of referrible trials.

sary to refer the trial of certain accomplices convicted of privy only. N. A. R. vol. 5, page 17.

1290. Under the above rules the sessions courts are to transmit to the nizamat adawlut all trials, in which the prisoner or prisoners are convicted and liable to a sentence of perpetual imprisonment, or death; as well as in all cases, wherein the judge disapproves the futwa given by the law officer, and has not been expressly authorized by this or any other regulation to pass sentence, notwithstanding such futwa, either for the punishment of the prisoner, or for his acquittal and discharge either with or without security. Reg. LIII. 1803, sect. 6, cl. 1. So, if the sentence within the competence of the judge appears inadequate. [para. 1285.] And other grounds of reference will be found below:—if the judge differs from the law officer on a point not provided for in the regulations; [para. 1295.]—or regarding the exposition of a point of law; [para. 1296.]—or if the law officer rejects material evidence; [paras. 1297 and 1298.]—or if the law officer acquits and judge convicts; [para. 1300.]—or if the judge convicts on one count, and the law officer on another. [para. 1301.] So, if the futwa is dispensed with, and the crime of which the prisoner is convicted be one, which the judge is not specially empowered by the regulations to punish; [para. 1312.]—as in a case of fraud. [Reports IV. P. 1851, page 25.]

In what trials referred the judge is not to pass sentence;

* Reports IV. P. 1851, part 2, page 747

and in what cases he is to pass sentence;

but such sentence is not final in referrible cases.

So, when an accomplice is convicted, in a case referred as to the principal;

but accomplice, if acquitted, to be released at once, although case referred.

If the session judge differs from law officer as to some of the prison-

1291. In trials referrible to the nizamat adawlut if the judge disapprove the futwa given by the law officer; or if the prisoner or prisoners convicted, or any of the prisoners convicted on the same trial, be liable to a sentence of death; [or if he considers the sentence, which he is empowered to pass, inadequate to the guilt of the prisoner;]* the judge is not to pass any sentence (except for the acquittal and discharge of any prisoners not convicted), but is to transmit the trial, with his opinion thereupon, for the sentence of the nizamat adawlut. If the judge concur with the law officer in the conviction of the prisoner, or prisoners, and none of them be liable to sentence of death, the judge is to pass sentence on the prisoner or prisoners so convicted as directed above. But such sentences, in all trials referrible to the nizamat adawlut are not to be deemed final, nor is any warrant to be issued for carrying the same into execution, until they be confirmed by the nizamat adawlut. Moreover, whenever the trial of a principal in any crime may be referred for the sentence or confirmation of the nizamat adawlut whether under the present or any other regulation; and an accomplice in the same crime has been brought to trial and convicted at the same time as the principal; the session judge is not to carry into execution his sentence upon the accomplice so convicted; but is to wait the confirmation or final sentence of the nizamat adawlut as well respecting the accomplice as the principal.(a) Provided, however, that this restriction be not understood to prevent the judge from passing a final sentence of acquittal upon any prisoners charged as accomplices, whom he acquits of such charge, in concurrence with the law officer; or from directing the release of any prisoners so acquitted, notwithstanding the reference of the trial of the principal to the nizamat adawlut. Reg. LIII. 1803, sect. 6, cl. 2.

1292. Whenever a criminal trial is referrible to the nizamat adawlut by reason of the session judge differing in opinion with his law officer as to the conviction or acquittal of one

(a) Under this provision the session judge has no discretion to convict and sentence an accomplice, because the principal is not on trial, in a case which is necessarily referrible to the sudder court, as in murder. Reports L. P. 1854, part 2, page 725.

or more prisoners included in the same trial; the sentence in which, in regard to the other prisoners, is within his competence under the regulations in force; it is necessary for the nizamut adawlut to revise only such parts of the proceedings on the trial as relate to the prisoner or prisoners in respect to whom the reference is made. In such cases therefore the session judge is required to pass such sentence as he deems just and proper, and within his competence, in regard to those prisoners whom he convicts or acquits in concurrence with the futwa of his law officer: and in his reference to the nizamut adawlut regarding any other prisoners included in the same trial, he is enjoined to state specifically his opinion on the guilt or innocence of the prisoners, with the grounds of his differing from the futwa; as also to point out in his report, accompanying the trial, those parts of the proceedings or evidence which may affect the prisoners, in respect to whom the case is referred, for the consideration and sentence of the nizamut adawlut. (a) Reg. IX. 1831, sect. 4, cl. 3.

ers, he is to pass sentence on those only regarding whom he concurs.

1293. In such cases the session judge is to suspend execution of any sentence of punishment which he passes in concurrence with the law officer, until the final sentence or orders of the nizamut adawlut have been received upon the trial referred to that court. Nothing in this regulation is intended to preclude the nizamut adawlut from revising the whole proceedings in the cases in question, if there appear sufficient grounds for so doing. Reg. IX. 1831, sect. 4, cl. 6.

But such sentence is not to be executed until the receipt of the orders of the nizamut; who may revise the whole proceedings.

1294. Under the above provisions a session judge ought in all cases, in which he concurs with his law officer in the conviction of any of the prisoners, to pass sentence upon such prisoners, but to suspend the execution thereof, until he receives the final sentence or orders of the nizamut adawlut upon the whole trial. In a case wherein the judge convicting the prisoners neglected to do this, the proceedings were returned with directions to pass sentence, and to re-submit the trial for the orders of the court in the matter of those prisoners, in whose acquittal he had not concurred with the futwa of his law officer. In another case when the judge acquitted one prisoner in opposition to the futwa, but did not pass sentence on the others in whose conviction he concurred, the nizamut agreed in the acquittal of the former, and ordered his immediate discharge, but directed the judge to dispose of the rest of the prisoners. N. A. R. vol. 4, page 330; and vol. 5, page 139.

If judge refers without passing sentence on those in whose conviction he agrees, the proceedings are returned by the nizamut.

1295. In a case in which the law officer convicted a prisoner of the act charged, but declared him not liable to any punishment, the nizamut adawlut held that the judge could not pass sentence of punishment; and that all trials must be referred to the nizamut adawlut, wherein the judge differs from the futwa of the law officer on any other grounds than those especially provided for in the regulations. N. A. R. vol. 3, page 230.

If the judge and law officer differ on any point not provided for in the regulations.

1296. The session judge is to refer to his law officer all questions relating to points of law, that may arise during the course of any trial; and respecting which no specific rules have been enacted by the governor general in council; and is to regulate his proceedings by the opinions which are delivered by such officer. Where such opinion appears to the judge contrary to the principles of natural justice, or to the Mahomedan law, he is nevertheless

Questions of law arising during the trial. If judge differs from the exposition of the law officer, sentence not to be passed, but case to be referred.

(a) The same rule was prescribed by Const. No. 484, dated June 6, 1828, "under the regulations at large, and particularly with reference to cl. 2, sect. 6, Reg. LIII. 1803," which is given above in para. 1291.

(in cases not provided for by the regulations) to be guided by them; and after completing the trial, and obtaining the futwa of the law officer upon the case, he is, without passing sentence upon it, to transmit the proceedings and futwa to the nizamat adawlut, with a separate letter stating his objections to such opinions or futwa, and to wait the sentence of that court. (a) *Beng. Reg. IX. 1793, sect. 54. Ced. Prov. Reg. VII. 1803, sect. 23.*

Religious persuasion of witnesses not to invalidate their testimony. If law officer rejects, sentence is not to be passed, but case referred.

1297. The religious persuasion of witnesses is not to be considered as a bar to the conviction or condemnation of a prisoner; but in cases in which the evidence given on a trial would be deemed incompetent by the Mahomedan law, solely on the ground of the persons giving such evidence not professing the Mahomedan religion, the law officer is to be required to declare what would have been his futwa, supposing such witnesses had been Mahomedans. The judge is not to pass sentence in such cases, but is to transmit the record of the trial, with the futwa directed to be required from the law officer, to the nizamat adawlut, which court, provided they approve of the proceedings held on the trial, are to pass such sentence as they would have passed, had such witnesses been Mahomedans. *Beng. Reg. IX. 1793, sect. 56. Ced. Prov. Reg. VII. 1803, sect. 25.*

So, if law officer rejects evidence on any other account, and the conviction of prisoner depends principally upon such evidence.

1298. If the evidence of a witness on a criminal trial before a sessions court is declared by the Mahomedan law officer inadmissible, on the ground of the witness being a police officer, or an officer of government of any description; or on any other ground of exception in the Mahomedan rules of evidence, which appear to the judge unreasonable and insufficient; the judge is to cause the examination of the witness to be taken, notwithstanding the exception stated by the law officer; and is to require the latter, on the completion of the trial, to declare in his futwa the sentence to which the prisoner would have been liable, if the evidence of the witness or witnesses objected to had been admissible under the provisions of the Mahomedan law. In such cases, however, if the conviction of the prisoner depend exclusively or principally upon the evidence of the witness or witnesses objected to by the law officer, the judge is not to pass any sentence; but is to refer the trial to the nizamat adawlut; which court, after taking a futwa from its law officer, is empowered to pass such sentence as may be deemed just and proper, under the regulations in force. *Reg. XVII. 1817, sect. 5.*

Example.

1299. Under the above rule, in a case in which the conviction of a prisoner rested principally upon the evidence of two females, whose testimony the law officer considered insufficient for conviction, it was held incumbent on the session judge to refer the case for the orders of the nizamat adawlut. *Const. No. 1045.*

If the law officer acquits, and the judge convicts, sentence is not to be passed, but case referred.

1300. When a person charged with a criminal offence, and brought to trial before a sessions court, is acquitted of the charge by the futwa of the Mahomedan law officer present at the trial, and the judge before whom the trial is held, on full consideration of the evidence, and of all the circumstances of the case, is of opinion that the proof against the prisoner, whether founded on his free and voluntary confession, or on the testimony of credible witnesses, or on circumstances of strong presumption, is sufficient to convict the prisoner of

(a) If the session judge considers the prisoner guilty of the charge preferred against him, but doubts whether he can be convicted under the law, it is the practice for him to refer the case for the final orders of the sudder court, with a full report, stating his own opinion on any points of law arising therein regarding which he is in doubt.

the whole, or any part of the charge, so as to render him a proper object of punishment, the judge is not to pass any sentence; but is, as directed by the regulations in all cases wherein a judge disapproves of the futwa of the law officer, to transmit without delay the whole of the proceedings on the commitment and trial, with the futwa of the law officer, to the nizamut adawlut; and is to state in a letter to that court the specific crime or crimes, which he considers established against the prisoner. Reg. XVII. 1817, sect. 2.

1301. In the event of a prisoner committed on two counts being convicted on only one count by the session judge, and only on the other count by the law officer, the judge is not competent to pass sentence, but should refer the trial to the nizamut adawlut. Const. No. 971.

So, if judge convicts on only one count, and law officer only on the other.

1302. In a case of conviction by the law officer of robbery with attempt to murder, the trial must necessarily be referred to the nizamut adawlut, whether the judge concurs in or dissents from the futwa. N. A. R. vol. 2, page 264.

Examples of referrible trials.

1303. All cases of burglary attended with corporal injury in such degree as to endanger life must be referred for the final orders of the nizamut adawlut, under cl. 4, sect. 8, Reg. XVII. 1817. N. A. R. vol. 4, page 284.

1304. Under the provisions of Reg. XVI. 1825, the case of a chokeedar convicted of dacoity is not necessarily referrible to the nizamut adawlut. N. A. R. vol. 5, page 68.

Examples of trials not referrible.

1305. A conviction on a charge of administering intoxicating drugs is not necessarily referrible to the nizamut adawlut. The provisions of cl. 4, sect. 8, Reg. XVII. 1817 refer to persons guilty of administering drugs of such a nature as to endanger life. N. A. R. vol. 5, page 121. C. O. No. 64 of vol. 3.

1306. A session judge, concurring with the assessors in a verdict of justifiable homicide, referred the trial to the nizamut adawlut, because the prisoner had concealed the body of the deceased. This, besides that it had formed no portion of the charge, was deemed an insufficient ground of reference. N. A. R. vol. 6, page 78.

In a case of justifiable homicide, it is no ground of reference that the prisoner concealed the body.

1307. In all trials, wherein the Mahomedan law officer considers the prisoner liable to discretionary punishment (*tazeer*, *acoobut*, or *seasut*), his futwa is to declare the same generally, with a statement of the grounds on which the prisoner is adjudged subject to discretionary punishment; leaving the measure of punishment in such cases to be determined by the session judge before whom the trial is held, or by the court of nizamut adawlut, under the provisions contained in this or any other regulation. Reg. LIII. 1803, sect 2, cl. 1.

Discretionary punishment.

Futwa to declare grounds of conviction, but to leave measure of punishment to the judge.

1308. If the crime, for which the prisoner is declared liable to discretionary punishment, in such cases, has been specifically provided for by any existing regulation, denouncing the penalty to be adjudged on proof of the commission of such crime; and the judge before whom the trial is held considers the crime to have been established against the prisoner, whether by his free and voluntary confession, or by the testimony of credible witnesses, or by strong circumstantial evidence; he is to sentence the prisoner to suffer the punishment for such crime prescribed by the regulations; or, if the case be referrible to the nizamut adawlut, to transmit the trial, with his opinion thereupon, to that court. Reg. LIII. 1803, sect, 2, cl. 2.

Sentence to be passed, if the crime has been provided for by any regulation.

If the crime has been provided for by no regulation, but specifically by the Mahomedan law; and a sentence of *hudd* or *kisas* is barred by a defect in the evidence; a second *futwa* is to be required.

1309. If the crime, for which the prisoner is declared liable to discretionary punishment, has not been specifically provided for by any regulation denouncing the penalty to be adjudged on proof of the commission of it; but is such as would have subjected the prisoner to the specific penalty of *hudd* or *kisas*, provided by the Mahomedan law, if he had been convicted by full legal evidence; and the *futwa* of the law officer declares him liable to discretionary punishment in consequence of the evidence not being such as the Mahomedan laws requires for a sentence of *hudd* or *kisas*, though sufficient to convict the prisoner on strong presumptive proof or violent presumption (*ghalib-oo-zun*); the judge before whom the trial is held, provided he concurs in the conviction of the prisoner, is to require the law officer to declare by a second *futwa* to what specific punishment (of *hudd* or *kisas*) the prisoner would have been liable under the Mahomedan law, if he had been convicted by full legal evidence; and is to proceed thereupon to pass sentence according to such second *futwa*; (commuting the punishment if any regulation requires it;) or, if the case be referrible to the *nizamut adawlut*, he is to transmit the trial with his opinion to that court. Reg. LIII. 1803, sect. 2, cl. 3.

So, if the crime has not been provided for by any regulation, and *hudd* and *kisas* are barred by a legal exception, not affecting the nature of the offence, and repugnant to justice,

1310. The judge before whom the trial is held, is to proceed in like manner as directed in the preceding clause, when the crime of which the prisoner is convicted (whether upon full legal evidence, or upon strong presumptive proof) has not been specifically provided for by any regulation; but would subject the prisoner to the specific penalty of *hudd* or *kisas* provided by the Mahomedan law, if the sentence against him for such penalty were not barred by some special exception, or scrupulous distinction (*shoobah*), not affecting the nature and criminality of the offence, and evidently repugnant to the principles of equal justice, in consequence of which bar to a judgment for the specific penalty the prisoner is declared liable to discretionary punishment. In such cases the law officer is to declare by a second *futwa* to what punishment the prisoner would have been liable under the Mahomedan law for the crime committed by him, if the special exception or distinction, by which *hudd* or *kisas* is barred in the particular case, had not existed; and the judge is to proceed thereupon as directed in the preceding clause. Reg. LIII. 1803, sect. 2, cl. 4.

But not, if such exception alters the nature, and diminishes the criminality of the offence.

1311. Nothing in this section, however, is to be construed as authorizing a sentence of discretionary punishment exceeding, or equal to, the specific punishment prescribed by the Mahomedan law, in cases where such specific penalty is remitted or mitigated by the provisions of the Mahomedan law, in consideration of circumstances which alter the nature, and diminish the criminality, of the offence, unless such enhanced or equal punishment for the crime in question has been expressly denounced by some regulation in modification of the Mahomedan law. Reg. LIII. 1803, sect. 2, cl. 5.

Trial must be referred if judge is not specifically empowered by regulations to punish.

1312. Whenever the *futwa* be dispensed with, and the crime of which the prisoner is convicted be one, which the judge is not specifically empowered by the regulations to punish, he is not to proceed to pass sentence, but is to refer the case for the consideration of the *nizamut adawlut*, stating at length in the proceedings the opinion of the panchayat, assessors, or jury, and his own opinion as to the crime proved, and the nature and extent of the punishment, which should be awarded. Reg. VI. 1832, sect. 4, cl. 1.

1313. Nor is any part of this regulation to be considered to authorize the infliction of any punishment whatever upon suspicion only (termed by the Mahomedan lawyers *wuhm*, *shuk*, or *shoobuh zaefah*) when the evidence against the prisoner is undeserving of credit; or the presumption of his guilt, arising from credible testimony or circumstantial evidence, is weak; and does not amount to the degree of strong and violent presumption held sufficient for conviction, and recognized as such in the Mahomedan law under the denominations of *ghalib-oo-zun*, *akbur-oo-raee*, and *shoobuh-u-curvee*, or *shoodeed*. When the judge, before whom the prisoner is tried, does not consider him convicted on such presumptive proof, or on the evidence of credible witnesses, or on his own confession, he is not to sentence the prisoner to suffer any punishment, whatever may be the futwa of the law officer. But, upon proof of notorious bad character, the judge may direct the magistrate to detain the prisoner in custody, until he gives sufficient security for his future good behaviour and appearance when required. Reg. LIII. 1803, sect. 2, cl. 6.

But no punishment is to be inflicted on suspicion only, or weak presumption of guilt.

Security may be taken for future good behaviour.

1314. If the crime of which a prisoner is convicted, and for which he is declared liable to discretionary punishment has neither been specifically provided for by any regulation, nor by any stated penalty in the Mahomedan law; and the judge before whom the trial is held considers the crime to have been established against the prisoner and deserving of punishment; he is to adjudge the prisoner, after consulting with the law officer respecting the measure of punishment which under the discretion left by the law, and the whole of the circumstances of the case, should be inflicted upon the prisoner, to suffer such punishment as appears adequate to his guilt, and the nature of the offence of which he is convicted; not exceeding corporal punishment of thirty-nine stripes, and imprisonment with hard labor for seven years. If in any instance this degree of punishment appears to the judge insufficient, in a case not specifically provided for by the Mahomedan law or the regulations, he is to transmit the trial with his sentiments thereon to the nizamat adawlut. Reg. LIII. 1803, sect. 2, cl. 7.

If the crime has not been specifically provided for by any regulation or by Mahomedan law.

1315. Under the above provision the session judge may award a pecuniary fine commutable to imprisonment. N. A. R. vol. 3, page 130. But he cannot award imprisonment and fine with further imprisonment in default of payment. Reports L. P. 1852, part 2, page 184; and 1855, part 1, page 729. Reports W. P. 1856, part 1, page 307.

Judge may sentence to fine, but not to fine and imprisonment.

1316. In many cases of corporal injury, extending even to *mailhem*, the law officers declared the prisoners on full conviction liable to *hukoomut-i-udl* only, or a just award, which is construed by them to mean payment by the prisoner of the expenses incurred for medicines and medical attendance by the party injured. Such reparation being considered wholly inadequate, it was enacted that the judge should, under such futwa, be competent to pass sentence of imprisonment for any period not exceeding seven years, with power to refer the record to the nizamat adawlut in any case in which they deem that degree of punishment inadequate; and that on receipt thereof the nizamat adawlut, after requiring a further futwa from their law officers, should pass sentence of imprisonment for such limited period of time, as under all the circumstances of the case may be equitable and just. (a) Reg. IV. 1822, sect. 6.

Power of session judge to pass sentence under futwa of *hukoomut-i-udl*.

(a) In a case, in which certain convicts, under sentence of perpetual imprisonment, were found guilty of assault and wounding, and declared by the law officer liable to *tazeer* as well as *hukoomut-i-udl*, it was held that the above provision does not preclude the judge from awarding corporal punishment under cl. 7, sect. 2, Reg. LIII. 1803. N. A. R. vol. 2, page 362.

**Conviction
of two or
more offen-
ces.**

In such cases an aggregate sentence may be passed within certain limits. If that is insufficient, the cases are to be referred.

1317. Whenever a prisoner is brought to trial before a sessions court for two or more distinct offences, included in separate commitments, and is convicted at the same session of two or more offences, the prescribed penalties of which, under the regulations in force, exceed in the aggregate thirty-nine stripes and imprisonment for fourteen years; but do not, for the crime established against the prisoner on any one commitment, amount to death or imprisonment for life (in which case the trial would be referrible to the nizamut adawlut); the judge is authorized to reduce the prescribed punishment for the whole of the offences of which the prisoner is so convicted at the same session, so as not to exceed in the aggregate thirty-nine stripes and imprisonment in banishment from the district for fourteen years; provided he is of opinion, on consideration of the several acts of criminality established against the prisoner and the circumstances of each case, that the punishment above specified is sufficient. If the judge, however, is of opinion that the prisoner is deserving of imprisonment for a longer period than fourteen years, he is to pass sentence in the several cases for the punishment prescribed by the regulations (except that the number of stripes to be adjudged against a prisoner at any one session does not exceed thirty-nine), and is to transmit the proceedings on each case, with a report of the circumstances, and his sentiments upon the punishment which should be inflicted upon the prisoner, for the final sentence or order of the nizamut adawlut. Reg. XV. 1814, sect. 2, cl. 1.

Principle restricted to offences committed before conviction.

1318. The principle of the above clause is also to be considered applicable to cases, in which prisoners, convicted and sentenced at a preceding session, are convicted at a subsequent session of another offence committed before their first conviction and sentence. But it is not meant to apply to any new offence committed by a person after his conviction of a former offence, whether the period of confinement to which he has been sentenced for his former offence has expired at the time of his committing the subsequent offence or otherwise. Reg. XV. 1814, sect. 2, cl. 2.

Consolidated sentence to be within aggregate of separate sentences.

1319. A consolidated sentence for distinct offences must not exceed in amount the aggregate of the penalties which might have been separately imposed. Reports *W. P.* 1854, part 1, page 612.

If the prisoner be liable on the first conviction to the maximum punishment, he need not be tried on any further charge, except when such charge would subject him to death, or imprisonment for life.

1320. When a prisoner, committed or held to bail for trial before the sessions on two or more distinct charges, is liable on one or more conviction to a sentence of imprisonment for fourteen years; and the further charge or charges against the prisoner are not such as would, on conviction, subject him to a sentence of death or imprisonment for life, it is not requisite for the judge to try such additional charge or charges, unless there appears to be special and sufficient cause for trying the same. But, whenever a judge exercises the discretion thus vested in him, he is to report the same with his reasons to the nizamut adawlut in the statement transmittible to that court of sentences passed by the sessions court, or, if the trial held upon the prisoner is on any account referrible, in the letter accompanying such trial; and it is competent to the nizamut adawlut to order a further trial of the remaining charge or charges against the prisoner in all cases wherein that court may judge it proper so to direct. Reg. XV. 1814, sect. 2, cl. 3.

1321. The provisions of Reg. XVI. 1825,(a) which declare the minimum punishment which a session judge can award in certain cases of robbery, do not alter the above provisions, under which the judge is competent to reduce the punishment of prisoners convicted of two offences to fourteen years' imprisonment. N. A. R. vol. 2, page 459.

The above provision is not affected by regulations awarding the minimum of punishment.

1322. When a prisoner is committed in several cases, it is imperative on the judge, under the above provisions, to try the whole or a sufficient number of the charges, until, upon a consideration of the several acts of criminality established against the prisoner, he is of opinion that a sentence of fourteen years' imprisonment, is sufficient and adequate, and that no reason therefore exists for trying the remainder. Const. No. 1011.

The judge must try a sufficient number of cases to warrant a maximum sentence; but need try no more.

1323. A prisoner was committed in two cases, charged in the first with murder by poison, and in the second with administering poisonous drugs with intent to rob; and being convicted in the first and declared liable to *seasut* extending to death, the judge of circuit did not think it necessary to proceed to the trial of the additional charge, which could lead only to an inferior penalty; but the nizamut adawlut deemed it advisable to proceed with the trial as it might tend, if proved, to establish an assertion made by the judge, that "the prisoner was in the habit of travelling about plundering by means of administering poisonous drugs." N. A. R. vol. 2, page 51.

But under certain circumstances the nizamut adawlut required another charge to be tried.

1324. When a prisoner is charged with two or more distinct offences, the record of each trial should be kept separate; and a futwa should be taken on each individual case, not on the whole collectively; under each futwa the judge should record his assent or dissent; and each of the trials should refer to the one last tried, which should include in its final order all the three cases. N. A. R. vol. 2, page 140.

In such cases, trials to be kept distinct; and sentence to be passed on all in one.

1325. When a prisoner is convicted of two offences, and labor is commutable to a fine in only one of the two cases, the sentences should be kept distinct. Reports IV. P. 1854, part 1, page 612.

If labor is commutable to fine in one case only, the sentences should in separate.

1326. Under the Mahomedan law it is said, that one punishment suffices for every previous repetition of the same offence; and this rule is strictly applicable to the specific punishment adjudged under a sentence of *hudd*; when extended to sentences of *tazeer*, it leaves a considerable discretion with the judge in apportioning the punishment to the number of offences committed, as well as to their degree of criminality. This consolidation of sentences (*tudakhil*) would not militate against a due enforcement of the above provisions, if the judge were careful to make the law officer deliver his futwa in conformity with cl. 1, sect. 2, Reg. LIII. 1803, when the prisoner is liable to discretionary punishment. C. O. No. 140 of vol. 1.

Rule for consolidation of sentences under the Mahomedan law.

1327. A case of burglary and theft was referred to the nizamut adawlut, because the prisoner was recommended to be transported for life in a case of dacoity transmitted at the same time: but, as he was acquitted of the latter charge, the former case was returned to the circuit judge to be disposed of in the usual manner. N. A. R. vol. 3, page 119.

Example of prisoner concerned in two cases referred to nizamut.

(a) These provisions were rescinded by Reg. I. 1831; but the rule applies to all laws which enact a minimum punishment.

SECTION. XXXVII.

OF CORPORAL PUNISHMENT.

Regulations
awarding corporal
punishment are re-
scinded.

1328. All provisions of the [then] existing regulations, which authorize a sentence of corporal punishment by any court or any officer exercising magisterial powers, are rescinded. (a) Reg. II. 1834. sect. 2, cl. 1.

Such punishment
to be commuted to
additional im-
prisonment.

Powers of courts.

1329. Whenever a case comes before such court or officer, in which a prisoner would be liable to corporal punishment under the [then] existing regulations, in addition to the period of imprisonment limited by the regulations, it is competent to such court or officer, passing sentence, to direct an additional period of imprisonment, as follows: courts of nizamat adawlut, or courts of session and circuit, two years,—magistrates or joint magistrates, one year,—assistants, principal or other sudder ameens, one month. Reg. II. 1834, sect. 2, cl. 2.

Powers of assis-
tants with special
powers.

1330. Assistants exercising special powers cannot in any case award a longer term of imprisonment than one month in lieu of stripes. They are, however, at liberty, as in other cases in which they deem the prisoner deserving of a degree of punishment beyond their competency, to return the case to the magistrate for the issue of final orders, stating their own opinion thereon. C. O. No. 162 of vol. 2. Const. No. 883.

Stripes cannot
be awarded, unless
they are expressly
mentioned by the
regulations as the
punishment of the
offence in question.

1331. A magistrate has no authority whatever to award corporal punishment [or a term of imprisonment in lieu thereof], where it is not expressly given to him by the regulations: his general powers of punishment, as laid down in sect. 19, Reg. IX. 1807, are limited to fine and imprisonment. C. O. No. 259 of vol. 1.

So, police officers
are not liable to the
commutation, be-
cause they were not
formerly liable to
stripes in addition
to imprisonment.

1332. As burkundazes, chokeedars, &c. were not formerly liable for neglect of duty to stripes in addition to imprisonment, the provisions of Reg. II. 1834, in prohibiting the infliction of corporal punishment, do not authorize any addition to the period of imprisonment, to which the officers in question were liable previous to the issue of that enactment. (b) C. O. No. 238 of vol. 2.

So, in a case of
fraudulent appro-
priation.

1333. So, as corporal punishment could not legally be awarded in a case of fraudulently taking cash and bank notes from the treasury, additional imprisonment for two years in lieu of stripes could not be awarded. Reports *L. P.* 1852, part 1, page 112.

Magistrate may
always commute
stripes to a year's
imprisonment.

1334. A sentence of imprisonment for one year in lieu of stripes, in addition to a sentence of six months' imprisonment, passed by a magistrate, is not illegal under the wording of the above provisions. Const. No. 1183.

(a) By Act III. 1844, corporal punishment has been legalized in certain cases of petty theft; but its provisions will be more appropriately noticed in the chapter of theft, than in this place.

(b) By sect. 6, Reg. III. 1812, and sect. 9, Reg. XIV. 1816, chokeedars and other watchmen, and burkundazes and inferior police officers, were liable to corporal punishment instead of fine or imprisonment, "provided the offender shall appear a fit object of corporal punishment, and the magistrate shall be of opinion that the infliction thereof will operate as a better example than the penalties of fine or imprisonment."

1335. A magistrate is competent, under the above provisions, to award imprisonment for a period of one year in lieu of corporal punishment, in addition to the term he is authorized to award under sect. 5, Reg. XII. 1818, in the case of a convict making his escape. Const. No. 1184.

1336. The above provisions do not exempt convicts, sentenced to labor in irons, from such moderate corporal punishment during their imprisonment, as may be unavoidable for the maintenance of the discipline of the jails. Reg. II. 1834, sect. 6.

Convicts, sentenced to labor in irons, may be flogged in certain cases.

1337. The session judge is not competent to award stripes under the foregoing section, that power being vested solely in the magistrate for the maintenance of discipline in the jail. Const. No. 1302.

But session judge cannot award stripes.

1338. All offences which are opposed to the maintenance of good order and discipline in the public jails (as those enumerated in sect. 5, Reg. XIV. 1816) are punishable with stripes under sect. 6, Reg. II. 1834, when established against convicts sentenced to labor in irons. But it must be borne in mind, that the corporal punishment should be moderate, and that it should be inflicted only when it is thought to be "unavoidable for the maintenance of the discipline of the jail." C. O. No. 235 of vol. 3.

When convicts in jail are liable to punishment by stripes.

1339. Prisoners punished by the magistrate for breach of jail discipline cannot afterwards be tried for the same offence, as any further punishment would be cumulative and therefore illegal. N. A. R. vol. 6, page 58.

If stripes, then no other punishment.

1340. No prisoner is to be flogged without the opinion of the civil surgeon being first taken as to whether the case is one in which that punishment can be safely administered. As a general rule, stripes should be inflicted upon the breech and not upon the back, proper measures being adopted to guard against the blows falling upon any other than the part intended to receive them. C. O. Govt. *Bengal*, May 13, 1852.

Surgeon to examine person to be flogged.

Stripes to be inflicted on buttocks.

1341. Corporal punishment may not be awarded in cases of culpable homicide under sect. 7, Reg. XVII. 1817, which was merely intended to limit the term of imprisonment, in commutation of *deput*, to seven years. Const. No. 352. C. O. No. 293 of vol. 1. In accordance with the spirit of this rule, the punishment of stripes was considered inappropriate in cases of wounding with intent to kill, and of assault attended with homicide and beating. N. A. R. vol. 2, pages 269, and 323.

Corporal punishment is not applicable to cases of homicide or wounding with intent to kill.

SECTION XXVIII.

OF FINES.

1342. No fines are to be imposed by any court of criminal jurisdiction, save and except to the use of government; and whenever a fine to the use of government is imposed, the court who passes the sentence is at the same time, weighing all the circumstances of the case, to fix a definite period of imprisonment to be held as equivalent to the fine; at the expiration of which the persons convicted are to be discharged, although they have omitted to

Fines imposed by a regulation.

All fines imposed to be to the use of government; and an equivalent period of

imprisonment to be fixed.

Power of session judge :

pay the fine. The imprisonment awarded by courts of session under this section, as an equivalent for fines imposed by them, is to be temporary in all cases, and not for life ; and their sentences are to be executed without reference to the nizamat adawlut. *Beng. and Ben. Reg. XIV. 1797, sect. 3, cl. 1. Ced. Prov. Reg. VI. 1803, sect. 31 ; and Reg. VII. 1803, sect. 39, cl. 1.*

in case of futwa of *deyut* :

* *kutl-amd,*
shihah-amd,
kutl-khota,
kutl-kayem-mo-
kam-ha-khota,
kutl-ba-subbub.

1343. Whenever the law officer declares prisoners liable to *deyut*, or pecuniary fines of any kind, for any other acts than murder and the several descriptions of homicide specified* in sect. 3, Reg. IV. 1797 (*Ced. Prov. sect. 15, Reg. VII. 1803*); the session judge is to commute at his discretion such *deyut*, or fines, to imprisonment for such period as he thinks adequate to the offence; and the sentences in such instances are to be carried into execution without reference to the nizamat adawlut, if for temporary imprisonment ; or referred to that court, if for imprisonment for life ; which at its discretion is to confirm the said sentences, or mitigate, or entirely remit, the imprisonment awarded. *Beng. and Ben. Reg. XIV. 1797, sect. 4. Ced. Prov. Reg. VII. 1803, sect. 39, cl. 2.*

In general is unrestricted.

1344. The power of a session judge to fine is unrestricted as to amount, except when it is defined by any specific regulation (as in the case of *dhurna* by Reg. VII. 1820.) Const. No. 959. This rule is confined to the *Lower Provinces*. C. O. No. 227 of vol. 3. *W. P.*

Power of nizamat adawlut.

1345. The nizamat adawlut is competent to impose fines to an indefinite amount, commutable to a limited period of imprisonment. N. A. R. vol. 2, page 304.

Power of magistrate and assistants.

1346. In all cases, in which the magistrates impose fines, the imprisonment to be fixed by them, as equivalent to the fines, is not to exceed the period which they can award under their general power. *Beng. and Ben. Reg. XIV. 1797, sect. 5. Ced. Prov. Reg. VI. 1803, sect. 31. Reg. IX. 1807, sect. 19.*

If the regulation is silent as to the mode of levying the fine.

1347. If a regulation, prescribing a fine for any offence, is silent as to the mode in which such fine is to be levied, it should be commuted to imprisonment under the above rules whenever the party on whom the fine is imposed neglects to pay it:—as in the case of persons illicitly cultivating salt churs, under sect. 12, Reg. I. 1824;—or of zumeendars neglecting to furnish lists of chokeedars, &c., under sect. 21, Reg. XII. 1807. Const. Nos. 388, and 1150.

Fines imposed by an Act.

To be levied by distress ;

and in default of chattels by imprisonment,

for not more than 2 months if fine is less than 50 rupees ; or 4 months if less than 100 ; or 6 months in other cases.

1348. In all cases of fines by which offenders are or may be punishable by any magistrate, according to the provisions of any Act heretofore passed, or which shall hereafter be passed by the governor general of India in council, it is lawful, in case of non-payment, if no other means for enforcing the payment are or shall be provided by such Act or otherwise, for the magistrate, by warrant under his hand, to levy the amount of such fine by distress and sale of any goods and chattels of the offender which may be found within the jurisdiction of such magistrate ; and if no such property is found within such jurisdiction, then it is lawful for every such magistrate by warrant under his hand to commit the offender to prison, there to be imprisoned only, or to be imprisoned and kept to hard labor, according to the discretion of such magistrate, for any term not exceeding two calendar months, where the amount of the fine does not exceed fifty rupees ; and for any term not exceeding four calendar months, where the amount does not exceed one hundred rupees ; and for any term not

exceeding six calendar months, in any other case; the commitment to be determinable in each of the cases aforesaid upon payment of the amount. Act II. 1839, sect. 1.

1349. This provision is applicable to the case of fines imposed under an Act, only when no other means of enforcing the payment are provided by such Act. Letter of Nizamut Adawlut to Magistrate of 24-Pergunnahs, No. 1415, October 6, 1852.

But only if Act supplies no other mode of enforcing payment.

1350. A person convicted of a breach of Act XI. 1835 (regarding printing presses) is liable to be punished with fine not exceeding a certain amount, and imprisonment not exceeding a certain term. Under these provisions the offender must be sentenced to imprisonment in addition to fine; and the fine is not commutable to a further period of imprisonment, but must be levied according to the above rule. Const. No. 1325.

Example of application of rule.

1351. In all cases in which offenders are or may be punishable by any magistrate with fine or imprisonment, or both, according to the provisions of any Act heretofore passed, or which shall hereafter be passed by the governor general of India in council, and where the extreme amount of the fine or imprisonment is not specified, it is not lawful for the magistrate to impose any fine exceeding two hundred rupees, or to imprison the offender for any term exceeding six months. Act II. 1839, sect. 2.

If the Act does not specify the extreme amount of fine or imprisonment, magistrate may not award more than 200 rupees, or 6 months.

1352. In all cases in which offenders are or may be punishable by fine before a magistrate according to the provisions of any Act heretofore passed, or which shall hereafter be passed by the governor general of India in council, it is lawful for the magistrate, and he is required, to receive proof of the commission of the offence upon oath, or upon solemn information in cases where a solemn affirmation is receivable by law instead of an oath. Act II. 1839, sect. 3.

Proof of the commission of the offence to be taken on solemn affirmation.

1353. In this Act and in all Acts heretofore passed by the governor general in council the term "fine" and "fines" extend to all "penalties" and "forfeitures;" and the term "magistrate" extends to all "joint magistrates," "persons lawfully exercising the powers of a magistrate," and "justices." Act II. 1839, sect. 4.

Explanation of terms, fine, and magistrate;

1354. The term "Act," used above, is employed in contradistinction to the "Regulation" strictly so called, and the provisions of that enactment are not intended to explain anything contained in the regulations on the subject of fines. C. O. No. 23 of vol. 3.

and Act,

1355. The imposition of heavy fines upon native servants of government, drawing small allowances, is objectionable, as involving them in pecuniary difficulty, and inducing them to resort to improper practices for the purpose of indemnification. The preferable course is, when an officer refuses to do that which his official duty requires of him, to transfer at once the office to a more obedient holder. C. O. No. 60 of vol. 3.

Miscellaneous.

Heavy fines not to be imposed on native officers.

1356. The creation and maintenance of unauthorized funds in the public offices, through the means of fines, or from deductions made from the pay of establishments, is prohibited; and sums thus accruing should be carried to the credit of government. C. O. No. 90 of vol. 3.

Unauthorized funds not to be created by fines.

1357. The form of a general register of fines is prescribed,* the object of which is to provide against the misappropriation, on the part of the ministerial officers, of moneys paid in to court; but it is not intended to prevent the adoption of any additional checks, which

Register of fines.

* v. Appendix B. No. 29.

the officer presiding in the court considers necessary. Due attention is to be paid to the entry in the register of all fines immediately they are imposed,—to the issuing of perwannahs to the nazir to realize the amount of such fines,—and to the examination of the register at the commencement of every month by the head clerk, serishtadar, nazir, and treasurer of the court. C. O. No. 4 of vol. 3.

SECTION XXIX.

OF LABOR AND IRONS.

Labor may be awarded in any case not prohibited.

Sentence always to contain order for labor or its remission.

Power to award not affected by Reg. II. 1834.

Labor is commutable to a fine except in cases of certain offences.

But the courts may always exempt from labor and irons.

Not commutable when sentence is for 5 years, or more.

1358. In all cases of misdemeanor, or offences punishable under sect. 19, Reg. IX. 1807, the magistrate may include labor as a portion of the sentence, when it is thought fit that labor should be imposed [unless, of course, the award of labor should be specially prohibited by law]; and in passing sentence officers are invariably to record, whether the imprisonment is to be with or without labor. C. O. No. 99 of vol. 4, *L. P.* Labor can form part of the punishment only when included in the sentence. Resolution Nizamut Adawlut No. 292, April 3, 1846. See para: 1374.

1359. Reg. II. 1834, in no way defines the classes of cases, in which the criminal courts are competent to pass a sentence of labor. It only declares in what cases a fine must, in the first instance, be imposed in lieu of labor. Reports *L. P.* 1853, part 1, page 727.

1360. In all cases of conviction for offences in which a sentence of imprisonment is passed for a period of less than five years, (with exception to the offences of murder, dacoity, highway robbery, burglary, theft, receiving stolen or plundered property, forgery, perjury, arson, and rape, or of convictions of any attempt to commit any of those offences) the criminal courts are required to commute the penalty of labor with or without irons, which they are authorized to award in addition to imprisonment, to a fine not exceeding the amount which they are respectively competent to impose under the regulations in force; such fine to be regulated with reference to the nature of the offence, the circumstances in life of the offender, and the term of imprisonment to which he is sentenced. The court imposing the fine is to fix a certain day within a reasonable time not exceeding one month for the payment thereof, and to direct that, in default of payment by the period prescribed, the prisoner be subjected to labor without fetters, until such fine be paid, or if not paid, until the completion of the term of his sentence. Nothing in this rule is to be construed to supersede the power of the commissioners of circuit, session judges, or nizamut adawlut, of exempting persons from labor and irons in any case whatever in which they deem such exemption just and proper. Reg. II. 1834, sect. 3, cl. 1.

1361. Under the above provisions, when a prisoner is sentenced to imprisonment for five years and upwards the labor cannot be commuted to a fine. C. O. No. 221 of vol. 2.

1362. Whenever labor is imposed according to C. O. No. 99 of vol. 4, it must be made commutable to fine in all cases in which commutation is required by Reg. II. 1834. Reports *L. P.* 1853, part 2, page 359.

Labor must be commuted when the law requires commutation.

1363. Since the term forgery, as above used, does not necessarily comprehend the crime of issuing forged coin, documents, &c. knowing them to be forged, the punishment of labor on conviction of such offence is commutable to fine. Const. No. 899.

Constructions of excepted offences; issuing forged documents;

1364. As wounding with intent to murder is equivalent to an attempt to commit murder, labor in such case cannot be commuted to fine. Reports *W. P.* 1856, part 1, page 510.

wounding with intent to murder;

1365. The guilty possession of stolen property (as distinguished from the guilty receipt) is not one of the exceptions; and therefore labor awarded in such case is commutable to fine. N. A. R. vol. 6, page 175.

guilty possession;

1366. So, in cases of conviction for burglary, when the crime does not amount to more than simple privity, the penalty of labor must be held to be commutable to a fine. Const. No. 1178.

privity to burglary;

1367. Accessories before and after the fact being felons in consideration of law, the privilege of commuting labor to a fine should not be extended to them, as to those convicted of privity which is a misdemeanor only. C. O. No. 8 of vol. 4.

accessaries;

1368. A prisoner sentenced to imprisonment for escaping from jail is entitled to exemption from labor, on payment of a fine, for the period of his confinement for that specific offence. Const. No. 1215.

additional imprisonment for escaping from jail.

1369. In cases in which a magistrate may sentence to a term of imprisonment with labor, and also to a fine commutable to a further period of imprisonment (as in cases of affray unattended with aggravating circumstances, under sect. 3, Reg. VIII. 1828), he is competent to award labor during the further period of imprisonment as during the original term; and he may make the labor redeemable by a fine for both periods. If labor is not awarded in the former division of the sentence, it ought not to be awarded in the other. Const. Nos. 972 and 1264.

The same rules apply in the case of additional imprisonment in lieu of fine.

1370. All prisoners exempted from labor on payment of a fine under the above rule are, as far as practicable, to be kept separate, both in and out of the jail, from convicts under sentence of labor in irons; and magistrates, and superintendents of prisoners, and their subordinate officers, are to be careful to prevent all communication between the two classes. Reg. II. 1834, sect. 3, cl. 2.

Prisoners exempted from labor to be kept separate.

1371. Three prisoners, sentenced to imprisonment without irons, and to labor inside the jail, petitioned to be allowed to work on the roads, and agreed to have gyves put on their legs; it was held by the nizamat adawlut, that the local officers were not competent to make any alteration in the sentence passed on the prisoners. Const. No. 1005.

Prisoners not sentenced to labor may not be allowed to work on the roads at their own request.

1372. The above rules are to be held to apply equally to persons convicted by the magistrates, joint magistrates, and assistants, and by the principal and other sudder ameen; but they are not intended to interfere with the general discretion vested in the magistrates of imposing fetters, or otherwise restraining refractory prisoners under the provisions now

The same rules are applicable to persons convicted by magistrates and their subordinates. But magistrate may al-

ways impose fetters on refractory prisoners, or those who have escaped.

in force for that purpose; nor to exempt from a sentence of labor, with or without irons, convicts who having been relieved therefrom effect their escape from a jail or other place of confinement, or from the custody of their guards, and have been re-apprehended. Reg. II. 1834, sect. 4.

Judge may always order exemption from labor, in passing sentence.

1373. Session judges may insert an exemption from hard labour in the warrants issued by them to the magistrate, in cases wherein, on consideration of the rank or situation in life of any person sentenced to imprisonment, they consider him to be an improper subject of hard labor. C. O. No. 44 of vol. 1.

When no specific order is passed for the imposition of fetters, magistrate may use discretion.

1374. In all cases wherein no specific orders are issued either by the nizamat adawlut, or sessions court, for the confinement of a prisoner with or without irons, the magistrate is at liberty to exercise his own discretion, and to direct the prisoner to be confined in fetters or not, according as the same appears proper or necessary for his safe custody, from the nature and circumstances of the case, considered with the prisoner's rank and former condition in life. C. O. No. 122 of vol. 1.

Cases of native soldiers.

1375. The above rule is applicable to the cases of native soldiers and camp followers, who are made over to the civil authorities to undergo sentences of imprisonment adjudged against them by courts martial. C. O. No. 155 of vol. 3.

But in such cases labor and irons should not be imposed for the preservation of discipline.

1376. In the case of certain persons sentenced to five years' imprisonment by the nizamat adawlut, in which the sentence made no mention either of labor or irons as forming part of the punishment, the magistrate was informed, on a reference, that it was intended that they should be confined without labor and without irons, unless the conduct of the prisoners should render a resort to this species of restraint and punishment necessary to the due preservation of discipline in the jail. N. A. R. vol. 3, page 49.

Labor is not to be imposed on persons unfitted; nor fetters on persons convicted of misdemeanors.

1377. Magistrates are not to work upon the roads persons unfit to be so exposed from their previous habits, or the nature of their offence; and they are generally restricted from passing a sentence of fetters in cases of misdemeanor; or from imposing them on any person confined for such offence, except in the event of special necessity arising out of the bad conduct of the offender during his imprisonment, which may make such restraint indispensable for his security: the magistrates therefore, in placing fetters under this restriction on any person convicted of misdemeanor, are to record on their proceedings the grounds of the measure in each case. C. O. L. P. Nos. 217 and 223; and W. P. No. 224 of vol. 1.

Form of warrant of imprisonment when labor may be redeemed.

1378. The following form is prescribed for warrants of imprisonment including a sentence of fine in lieu of labor, under the above provisions: "——— and sentenced to be imprisoned without irons for —— years from this date, and to pay a fine of rupees ——, on or before the —— day of ——, or, in default of payment, to labor, until the fine be paid, or the term of sentence expire." C. O. No. 146 of vol. 2.

SECTION XXX.

OF TUSHEER.

1379. It is not lawful for any court or magistrate, within the territories under the government of the East India Company, to sentence any offender to be publicly exposed by tusheer, or to any other degrading exposure. Act II. 1849, sect. 2. Tusheer abolished.

SECTION XXXI.

OF TRIALS REFERRED AND CALLED FOR.

1380. The sessions court is to transmit to the nizamut adawlut copies of the proceedings on the trial of all prisoners, whom it sentences to suffer death, or who in the opinion of the court are deserving of capital punishment, within ten days after the trial is completed, or as much earlier as from the state of business may be practicable. Reg. IX. 1793, sect. 58. Reg. VII. 1803, sect. 27. **When to be forwarded.**
In cases involving capital punishment, trial to be transmitted with.

1381. In the transmission of trials to the nizamut adawlut, the session court is to give a preference, as far as practicable, to those trials in which the prisoner or prisoners have been sentenced to capital punishment, or are liable to suffer such under the regulations. Reg. IV. 1797, sect. 13. Reg. VII. 1803, sect. 36. Such cases to be transmitted first.

1382. In the transmission of the proceedings to the nizamut adawlut, the session judge is to be guided by such forms and instructions as he receives from that court. Reg. IV. 1797, sect. 14. Reg. VII. 1803, sect. 38. Judge to be guided by the instructions of the nizamut.

1383. The session judge is competent to hold to bail, or to direct the magistrate to admit to bail, any prisoner or prisoners, whose trials are referrible to the nizamut adawlut in consequence of the judge not concurring in the futwa of the law officer for the conviction of the prisoner. When the prisoner is not able to find bail, the judge is, with the least possible delay, to transmit the proceedings held upon the trial with a letter stating the grounds, on which he does not concur in the futwa of the law officer, to the nizamut adawlut; and the law officers of that court are to deliver their futwa, as soon as possible after the receipt of the trial, for the early sentence or order of the court. Reg. XIV. 1810, sect. 7. In cases referred the judge may admit the prisoners to bail; and if they cannot provide it, judge is to forward and the nizamut to conclude the trial without delay.

1384. A judge on circuit is invariably to transmit the counterpart record of the proceedings from the station where the trial has been held, before he proceeds to any other station; unless from the number of referrible trials, his detention, while the record is transcribing, would be such as materially to impede the circuit; in which case he may defer the transmission of the trial till his arrival at the next station; reporting to the nizamut adawlut, before he quits the station at which the trials were held, what referrible trials are so deferred, the Judge on circuit is to transmit referrible trials from the station where they are held, except in special cases.

dates on which they were respectively held, and how soon the records will be transmitted. But the transmission of trials is not, in any instance, to be delayed beyond ten days after the arrival of the judge at the next station, without strong and special reasons of absolute necessity, to be fully and immediately reported for the information of the court. C. O. Nos. 27, 143, and 181 of vol. 1.

Delay in forwarding trials is to be avoided, and is considered inexcusable.

1385. It is essential to the ends of justice that delay in transmitting the records of trials referred should be obviated, as well to prevent the lengthened confinement of prisoners, who may be ultimately acquitted by the nizamat adawlut, as to expedite the punishment of those who may be convicted. No valid excuse can possibly exist for the unnecessary procrastination of their despatch; and the nizamat adawlut requires the judges so to regulate their own time, and that of their officers, that no cause of dissatisfaction may occur on this score. Reg. X. 1799, preamble. C. O. Nos. 54 (para. 24), and 135 (para. 5) of vol. 2.

Record.

Counterpart record to be forwarded with English letter containing the opinion of the judge.

The record how to be authenticated and what to include.

The proceedings of the magistrate to be sent in original; but certain papers to be transmitted to the sessions record.

* v. ¶ 586 and 1178.

1386. As soon as possible after the close of any trial referrible to the nizamat adawlut, and with no further delay than is necessary to transcribe the proceedings held thereon, the session judge is to transmit a complete and exact counterpart of the original record of all proceedings held, and papers received, relative to such trial, with an English letter stating his opinion on the evidence, and on the guilt or innocence of the prisoners. The record is to be authenticated by the signature of the judge, and the seal of the law officer, before whom the trial has been held; and is to include the whole of the proceedings held before the sessions court, with every examination, exhibit, or material paper of whatever denomination, taken by or delivered to that court. The whole of the proceedings and papers received from the magistrate, upon the case referred, are also to be annexed to, and transmitted with, the proceedings of the sessions court; but any variations between the depositions of the witnesses before the magistrate, and session judge, are to be carefully noticed on the proceedings of the latter, as directed in cl. 7, sect. 7. Reg. IV. 1797*; and any confessions of prisoners before the magistrate, any inquest taken in cases of homicide, or any other evidence appearing on the proceedings of the magistrate, are to be entered, with the necessary proof, on the proceedings of the sessions court. Reg. X. 1799, sect. 2. Reg. VII. 1803, sect. 41.

Report of inquest is invariably to be filed with the sessions proceedings.

1387. In all references of trials of murder, the report made to the magistrate of the inquest held on the body of the deceased is invariably to be transmitted with the proceedings. If no inquest has been held, the cause of omission is to be noted in the letter accompanying the trial, the magistrate being called upon if necessary for an explanation. C. O. No. 17 of vol. 1.

The proceedings of the sessions court to be copied; the magistrate's amlahs are to assist in copying, and judge may employ additional mohurirs.

The proceedings of the magistrate

1388. Copies only of the proceedings of the sessions court are to be transmitted to the nizamat adawlut, the originals being retained for record in the office. And in order to enable the judge to prepare such copies with the least possible delay, the magistrate is required, on the application of the judge, to afford as far as practicable the assistance of his native officers in transcribing the original proceedings; and the judge may also employ any additional mohurirs he may find necessary for the same purpose, transmitting a contingent bill on this account for the sanction of government. The proceedings and papers received from the magistrate,

required by the above provisions to be transmitted to the nizamat adawlut, are to be transmitted as received from the magistrate without making copies of them; and such papers, after the nizamat adawlut has passed sentence on the trial, are to be returned to the sessions court. The object of sending these papers in original is to avoid the delay, trouble, and expense, attending the copying of them; and no copies, therefore, should be taken, except in special cases where peculiar reasons render it advisable. C. O. Nos. 27, and 28 of vol. 1; and Nos. 135 (para. 5), and 191 of vol. 2.

are to be sent in original, and not to be copied except in special cases.

1389. The 6th paragraph of C. O. No. 54 of vol. 2,* was not intended to alter the practice of filing with the record of trials submitted to the nizamat adawlut the original confessions of prisoners. All original confessions and police reports are to be annexed, in the first instance, to the original record of the trial; and in all cases referred to or called for by the court, the originals should be transferred to the copy of the record submitted, attested copies being retained on the original record. C. O. No. 84 of vol. 2; and No. 52 of vol. 4. *W. P.*

Original confessions, &c. are to be filed in the copy of the record sent to the nizamat.

* v. ¶ 1164.

1390. Session judges and magistrates are to cause their native officers to be very careful in transcribing the proceedings intended for the nizamat adawlut. C. O. No. 22 of vol. 1.

Care to be taken in copying papers.

1391. By cl. 2, sect. 7, Reg. IV. 1797 (*Ced. Prov.* cl. 1, sect. 18, Reg. VII. 1803) it was directed that Persian translations should be annexed to all examinations taken down in any other language than the Persian; and by sect. 2, Reg. X. 1799 (*Ced. Prov.* sect. 41, Reg. VII. 1803) these translations were to be included in the record of referred trials transmitted to the nizamat adawlut. But, since the introduction in the conduct of public business of the vernacular language in lieu of Persian, the court in the *lower provinces* have dispensed* with translations of all proceedings in criminal trials referred to them, with the exception of those cases, tried with the assistance of the law officer, in which the session judge recommends a capital sentence; in such cases the translations are to be made in the Oordoo language, and to be submitted in a distinct and separate nuthee. The *Western* court have dispensed with the translations of evidence recorded in the vernacular language, except in so far as they require the session judges, in such cases as relate to districts wherein peculiar or corrupt dialects are in use, to transmit all proceedings they may refer to, or send up on a call of the court, written in a correct Oordoo style, and a fair and legible character; and direct the magistrates, wherever uncommon words or obvious provincialisms occur in a record of evidence, to cause the mohurir at the time of taking it down to enter in the margin the corresponding or equivalent term in Persian. C. O. Nos. 26, *W. P.* and 94, *L. P.* of vol. 3; No 243 of vol. 2; and C. O. S. D. A. No. 42, July 5th, 1839.

Rules regarding translations of papers included in the record,

in the lower provinces,
* except as regards Orissa,

and in the Western provinces.

1392. In all trials regularly referred to or called for by the nizamat adawlut, copies of the vernacular and English calendars are invariably to be placed with the nuthee; and in the latter a mark is to be placed opposite the name of every witness included therein, who has been examined on the trial; a memorandum also of the names of all witnesses, not named in the magistrate's calendar, whom the judge has thought proper to summon and examine, is to be entered thereon. The preparation of the list of papers composing the record (a form of which is annexed to C. O. No. 54 of vol. 2*) is to be carefully superintended. As many trials are now required to be submitted in original, all depositions are to be correctly and

Copies of the vernacular and English calendars to be placed with the nuthee; and memoranda regarding the witnesses examined.

* v. appendix C, No. 10.

legibly written. C. O. No. 273 of vol. 1 ; Nos. 187 and 230 of vol. 3. *L. P.* ; No. 52 of vol. 4 ; *W. P.* and No. 2, February 7, 1856. *L. P.*

If magistrate requires copy of his proceedings before their transmission to the nizamat, he is to apply to the judge, who is to comply with the application, or to state his reasons for refusing it to the nizamat.

1393. Whenever a magistrate judges it necessary to take a copy of the whole, or any part of the original proceedings held by him, in a trial referrible by the sessions court to the nizamat adawlut, either on account of some of the persons charged with the same offence not having been apprehended, or from any other cause, he is to make application to the session judge to be allowed to take a copy or extract of such proceedings before the transmission of them to the nizamat adawlut ; and the judge is to comply with such application, unless in any particular instance the immediate transmission of the trial to the nizamat adawlut appears indispensably necessary. The magistrate, having taken the copy or extract required by him, is to return the original proceedings without delay to the judge, who will then transmit the same with the proceedings of the sessions court to the nizamat adawlut. When the judge deems it necessary to submit the trial without giving the magistrate an opportunity of taking a copy or extract of the proceedings held before him, he is to state the circumstance in his letter accompanying the trial to the nizamat adawlut, who will either take up the trial immediately, or will cause the magistrate to be furnished with the copy or extract desired by him. C. O. No. 94 of vol. 1.

Letter.

Letter containing opinion of judge to be sent with the record.

1394. In all cases in which the sessions court is directed not to pass sentence, the judge is to accompany the record of the trial ordered to be transmitted to the nizamat adawlut with a letter containing his opinion on the merits of the case. Reg. IX. 1793, sect. 57. Reg. VII. 1803, sect. 26.

Form of the letter, and what particulars are to be noticed therein ;

1395. In trials referred to the nizamat adawlut the letter accompanying the reference should commence in this form : " I transmit herewith, to be laid before the nizamat adawlut, the proceedings on the trial noted in the margin, held at the station of——on the——."

Court of the session judge of zillah *Hooghly*.

Trial No. 3 of the calendar for the month of June 1846.

Government,.....Prosecutor,
versus

1. Bindrabun Das, aged 36 years, son of Heeranund, apprehended on the 5th May, and committed on the 12th June,	} Prisoners.
2. Hurdial, aged 50 years, son of Govind Pershad, apprehended on the 6th May and committed on the 12th June,	

Charge,.....Murder.

Date on which the offence was perpetrated, May 3rd, 1846.

Futwa, *hisas*, [or *seasut*, as the case may be.]

Both prisoners are in jail.

The marginal note should contain the particulars, and be entered according to the form annexed : the specification of the trial is to be inserted in English only. The body of the letter should contain a brief recapitulation of the circumstances stated by the prosecutor, of the evidence adduced in support of the charge, and of the defence. The letter should conclude by stating the judge's concurrence with, or dissent from, the futwa ; together with a distinct expression of the judge's opinion

as to the guilt or innocence of the prisoner ; and, if the former, the specific crime which in his judgment has been established against the prisoner. C. O. No. 186 of vol. 1 ; and No. 54 of vol. 2, paras : 9, 10, and 11.

1396. The judge is to note in the margin of the letter, under the charge on which the prisoner is committed, the date on which the offence is supposed to have been perpetrated; and opposite to the name of each prisoner the dates of his apprehension and commitment for trial. C. O. Nos. 135 and 148 of vol. 2.

including the dates of the perpetration of the offence and of the apprehension and commitment of each prisoner;

1397. A note is to be entered in the margins of the letters which accompany trials referred to the nizamat, and those called for by them, stating distinctly whether the defendants are in jail, or at large on bail, and in the latter case from what date. C. O. No. 147 of vol. 3. *L. P.*

and whether the prisoners are in jail or on bail.

1398. The names of those prisoners only, in regard to whom the reference is made, are to be inserted in the marginal note of the letter of reference; the inclusion of others, who have died or escaped prior to the termination of the trial, or have been acquitted or sentenced by the session judge, being calculated to create confusion and to mislead. And no papers are to be submitted with the record, which relate exclusively to prisoners regarding whom the reference is not made,—as *e. g.* the defence of such prisoners, or the depositions of witnesses called in their behalf. C. O. No. 228 of vol. 3. *W. P.*

The papers connected with those prisoners only, regarding whom the reference is made, are to be sent with the record; and their names only inserted in the letter.

1399. The names of prisoners, and the sentence, as noted in the margin of the transmitting letter should exactly correspond with the names and sentence as entered in statement No. 9. There ought to be no difference in the spelling of the names, as entered in the calendar and letter of reference respectively, and the details of the charges against the prisoners should be *precisely* the same. And both names and charges must be written distinctly. C. O. No. 2, February 7, 1856. *L. P.*

Names of prisoners and sentence to correspond exactly with statement.

1400. The judge is to insert, in red ink, in the margin of his report, the name and number of the witness or witnesses, to whose evidence he is alluding. C. O. No. 111 of vol. 4. *L. P.*

Reference to be made in red ink to the witnesses.

1401. The judge is to write the names of all the prisoners, whose trials are referred to the nizamat adawlut, in the margin of the letters accompanying the trials, in English, in the order in which they are brought forward for trial. C. O. No. 102 of vol. 1.

Names of prisoners to be noted in the order in which they were tried.

1402. In referring any trials, wherein one or more of the prisoners are liable under the regulations to a sentence of death, the name of such prisoner's father is to be specified in English in the margin of the letter. C. O. No. 126 of vol. 1.

In cases involving death, the name of the prisoner's father to be specified.

1403. The court requires particular attention to be paid to the rules of C. O. No. 54 of vol. 2,* regarding the arrangement of the papers on the record of cases referred, and the transmission of them to the nizamat adawlut; as in the case of inattention to these rules it is necessary to return the proceedings for revision and amendment. The additional degree of labor, incident to a more careful arrangement of the papers in each case by the ministerial officers, is trifling in comparison with the objects contemplated by the circular order in question; and the judge should impress on them that, when it is found necessary to return the whole proceedings for amendment, their labor is only increased by their carelessness in the first instance.(a) C. O. No. 100 of vol. 2.

Particular attention required to the arrangement of the record, and the rules regarding the transmission of the case.

* See above, and page 215 *et seq.*

(a) The four last cases in volume 5 of the Nizamut Adawlut Reports are given as specimens of reports of referred trials. See pages 181, 186, 193, and 197. But see para. 1409.

Judge must record his opinion of the guilt or innocence of the prisoner.

1404. The judge having referred a trial for dacoity, wounding, and arson, without giving, in his letter or in the proceedings, a clear and explicit opinion as to the guilt or innocence of the prisoner, the case was sent back to him to supply the omission. Const. No. 222.

How far the judge is to recommend the measure of punishment to be awarded.

1405. In referring any trials for the final orders of the nizamat adawlut, the judge is to specify the punishment which, in his opinion, would be adequate to the crime established against the prisoners. The Western court, however, excepts from the operation of this rule trials held with the assistance of a law officer, in which cases the judge is to leave the measure of punishment to be awarded to be determined by the nizamat adawlut, confining himself to recording his opinion of the guilt or innocence of the prisoner, and of their relative degrees of guilt, should there be more than one prisoner. C. O. Nos. 22, 153, *W. P.* and 181 *W. P.* of vol. 3.

When the judge recommends imprisonment for life.

1406. In referring trials in which imprisonment for life is recommended, the judge is invariably to state his opinion, whether such imprisonment should be undergone in transportation or in the Alipore jail, with his reasons for proposing whichever of the two is suggested by him. (a) C. O. No. 41 of vol. 3.

When the judge refers a case beyond his competence for an extension, mitigation, or remission of punishment, he is to notice the same in his letter, and to state the grounds of his judgment.

* i. e. cases of robbery attended with wounding, &c.

1407. Whenever the judge refers the trial of a prisoner or prisoners, whom he considers proper objects of capital punishment under cl. 2, sect. 4, of this regulation*; or of imprisonment for life; or of a mitigation of punishment under cl. 5 of that section; or of an extension, mitigation, or remission of punishment in any case whatever; he is to be careful to notice the same in his letter accompanying the trial referred; and is to state at large the grounds of his judgment, whether for or against the prisoner, with such of the facts and circumstances in evidence upon the trial, as may be necessary to explain the case of the prisoner whose punishment is proposed to be extended, mitigated, or remitted. Reg. LIII. 1803, sect. 6, cl. 3.

Extracts from the statements relative to the case are to be sent with the record in cases called for.

1408. Session judges are to submit with each trial called for on perusal of the jail delivery statements, whether the call has been made by letter or by precept, an extract from the statements containing whatever information was conveyed in them relative to the case called for. When some prisoners have been punished and others released in the same case, an extract from each of the statements is required. The same remark applies to prisoners whose trials are postponed. But in appealed cases it is unnecessary to submit extract copy of sessions statement No. 6, when the original statement has been previously submitted to the court. (b) C. O. Nos. 110, and 149 of vol. 2; No. 164 of vol. 3; *W. P.* and No. 13 January 12, 1855. *L. P.* These extracts are not required in the *Western Provinces*. C. O. No. 277, March 5, 1855. *W. P.*

(a) By C. O. No. 180 of vol. 3, the judge was directed invariably to recommend in such cases a sentence of transportation for life instead of imprisonment for life; the object of which was to save the time of the court, as a single judge could not, on a recommendation of imprisonment for life, pass sentence of transportation, which is considered an aggravation of punishment. But this rule is no longer required to be observed, in consequence of the enactment of Act XIV. 1844, which authorizes a single judge of the sudder court to pass sentence of transportation beyond sea for life against a prisoner recommended to be imprisoned for life. C. O. No. 229 of vol. 3. *L. P.* See para. 1491.

(b) For particulars to be stated in letters transmitting appealed cases, see para. 1294.

1409. In his English decisions and reports on criminal trials, the judge should endeavour to confine himself to a clear and concise statement of the case, concluding with the reasons on which his judgment is formed. All lengthy recapitulation of evidence should be avoided; and in the narration of facts reference should be made marginally to the several witnesses, by whom the facts in their proper order are established in evidence. Due attention to these remarks will ensure a considerable saving of time to both the session judge and the court. C. O. No. 111 of vol. 4. *L. P.*

Reports of trials to be clear but concise;

1410. It is the duty of a session judge, when he refers a trial, as well as when he disposes of it himself, to give out the whole impression produced by the case on his own mind, in every material view; and to show the process by which he has attained the result. If he considers the prisoner guilty, he ought to account for or reconcile the apparent contradictions in the evidence. Reports *W. P.* 1851, pages 324 and 327. Where the case rests upon circumstantial evidence, it is not sufficient to refer generally to the circumstances on which the judge relies for conviction. He should distinctly specify them, and should set forth fully their scope and relation to the proof, as they appear in evidence. The examination of the difficulties of a case should not be devolved upon the sudder court. The duty of a judge is imperfectly performed, when the material defects in the evidence and the probabilities of the case are passed over without note or comment. Reports *W. P.* 1854, part 1, page 3. The primary responsibility in the determination of guilt or innocence on the legal evidence and proofs in each case, rests with the court which has had the parties and witnesses before it; and the confidence of the sudder court in the care bestowed upon the case at the trial is necessarily shaken, when defects which are apparent on the face of the record have been overlooked in the sessions court. Reports *W. P.* 1854, part 1, page 495.

but should contain the opinion of the judge on the whole of the evidence, accounting for or reconciling all discrepancies. The examination of the difficulties of a case should not be devolved upon the sudder court.

1411. Where a session judge does not fairly grapple with a case; where he fails to give out his distinct impression of the value of the evidence, and its bearing on the prisoner's guilt; where he omits to detect difficulties or discrepancies, opposed to the acceptance of evidence, which a thorough examination and comprehensive view of the *whole papers* would elicit; or where, though he may observe, he fails to inform the court by what process he has overcome or reconciled them; in short, where he throws upon the superior tribunal the burden of any duty or function primarily devolving upon himself; in all these instances, a session judge only very imperfectly discharges the duty required of him by the nature and responsibility of his office: and the court of final resort, in whom is vested by law the ultimate determination of cases involving the liberties and lives of accused criminals, upon perusal of the proceedings and reports alone, has, under such circumstances, just ground of dissatisfaction and complaint. C. O. No. 1047, August 10, 1854. *W. P.*

The session judge fails to perform his duty, if he does not report on the whole of the evidence, or omits to detect difficulties or discrepancies.

1412. In the event of a period exceeding six months having elapsed since the actual transmission to the nizamat adawlut of any trial, in which the sentence or order of the court has not been received, the judge is to notice the same in his letter, accompanying the monthly statements, for the information of the court; stating the names of the prisoners; the crime charged against them; the date of the letter of reference; and the date on which the proceedings were transmitted. C. O. Nos. 167 (para. 5), 175, and 333 of vol. 1.

If the nizamat do not pass orders on the case within six months, the judge is to remind the court.

SECTION XXXII.

OF THE NIZAMUT ADAWLUT.

**Constitution
and
functions.**Courts where to
be held.

1413. The nizamut adawlut, or superior criminal court, is to be held at Calcutta. *Beng. Reg. IX. 1793, sect. 66.*

1414. A separate court of nizamut adawlut is constituted for the Western Provinces, and it is competent to government to fix the station, at which it is to reside, at such place within the territories belonging to this presidency, as may, from time to time, be deemed expedient. *Ced. Prov. Reg. VI. 1831, sect. 3.*

Number of judges
of which the court
is to consist.

1415. The court is to consist of as many judges, as government may from time to time deem necessary for the despatch of the business thereof. And there are no distinctive denominations or official designations of the different judges. *Reg. XII. 1811, sect. 2, cl. 2. Reg. III. 1829, sect. 2. Reg. VI. 1831, sect. 4.*

Oath to be taken
by the judges.

1416. Each of the judges who may be appointed to the court of nizamut adawlut, previous to the execution of the duties of his office, is to take and subscribe before the court, or before any person whom the government may commission to administer it, the same oath as is required to be taken and subscribed by the judges of the courts of circuit by sect. 34, *Reg. IX. 1793. (Sec para. 1111.) Reg. II. 1801, sect. 11. Reg. VIII. 1803, sect. 4. Reg. VI. 1831, sect. 5. Reg. III. 1829, sect. 3.*

Appointment
of register, and
oath.

1417. The court is to have a register, who is to be styled register to the court of nizamut adawlut. He is to take and subscribe before the court, previous to entering upon the execution of the duties of his office, the following oath : " I, A. B., register to the court of nizamut adawlut, solemnly swear, that I will truly and faithfully perform the duties of register to this court, according to the best of my knowledge and ability, and that I will not receive, directly or indirectly, any present or nuzzer, either in money or in effects of any kind, from any party in any suit or prosecution to be instituted, or which may be depending, or have been decided in the court of which I am register ; nor will I, directly or indirectly, derive any advantage or emolument whatever from my office, excepting such as the orders of the governor general in council do or may authorize. So help me God." *Reg. IX. 1793, sects. 69 and 70. Reg. VIII. 1803, sect. 7. Reg. VI. 1831, sect. 5.*

Duties which may
be transferred to
register.

1418. It is competent to either of the courts of nizamut adawlut, by an order under the signature of the register of such court, to transfer to such register the duty of preparing appealed cases for trial, and of executing the decrees and orders of the said court, and to authorize him to issue the necessary process, and to proceed thereupon agreeably to the rules prescribed by the general regulations of government. *Act XVII. 1841, sect. 1.*

Deputy and assis-
tant register.

1419. Whenever the government deems it expedient to appoint any persons, not being covenanted servants, to the offices of deputy register or assistant register to either of the

courts of nizamat adawlut, it is competent to such court to assign to such officer any duties at present performed by the register. Act VII. 1840.

1420. It is competent to any judge of the court, to whom this duty is delegated by the court at large, to receive petitions of appeal, or any other petitions receivable by the nizamat adawlut, and to proceed thereupon as the regulations authorize, and direct; so that all such petitions are received in open court; and that no decision or final order be passed thereupon, which is repugnant to a previous decree or order of the court. Any one or more of the judges may also take the depositions of witnesses in open court, instead of causing the same to be taken by the register, in cases where this mode of examination is judged advisable; and, generally, the judges are authorized to regulate the mode and order of their own proceedings, as well as the execution of their process, subject to the rules prescribed by the regulations. All process issued from the court is to be signed by the register, under such instructions as are prescribed by the court for his guidance. Reg. II. 1801, sect. 13. Reg. VIII. 1803, sect. 5.

Receipt of petitions.

Depositions of witnesses how to be taken.

Court to regulate their own proceedings.

Process how to be issued.

1421. In proceedings before either of the courts of nizamat adawlut it is not necessary to take any security for costs; and it is competent to them to frame such rules of practice for the due exercise of the criminal jurisdiction vested in them by the regulations, as may from time to time be found requisite. Such rules when framed are to be submitted to the governor general of India in council; and after they have been approved by him, they are to be of the same force as if they were inserted in this Act. Act XVII. 1841, sect. 2.

Security for costs not to be taken.

Court may frame rules of practice,

which are to be submitted to government.

1422. The court of nizamat adawlut is to be an open court, and is to meet as often as the state of business may require. The ordinary sittings of the court are to be holden once in each week, and special sittings are to be summoned when necessary. A regular diary is to be kept of the proceedings of the court; but is not to be recorded in English further than the court may find convenient and conducive to regularity. The court is to furnish attested copies and translations of its proceedings in cases where a reference may be competent to government. Reg. IX. 1793, sect. 68, Reg. II. 1801, sect. 13. Reg. VIII. 1803, sects. 5 and 6. Reg. VI. 1831, sect. 7, cl. 1.

To be an open court.

Sittings.

Diary.

Copies and translations of proceedings in cases referred to government.

1423. The proceedings of the court are not required to be kept in English further than the court may find convenient and conducive to regularity; nor will copies of the proceedings be hereafter required except in cases of appeal to Her Majesty in Council, or of reference to government, as prescribed by the regulations; in which cases attested copies and translations are to be furnished as heretofore. Reg. II. 1801, sect. 16.

Proceedings not to be kept in English further than is convenient.

1424. The nizamat adawlut has cognizance of all matters relating to the administration of justice in criminal cases, and the police of the country; and is to submit to the governor general in council such regulations regarding these subjects as it may deem advisable. The court is to exercise all the powers that were vested in it, whilst it was stationed at Moorshedabad, and superintended by the late naib nazim, the Nawab Mahomed Reza Khan. Reg. IX. 1793, sects. 72 and 73. Reg. VIII. 1803, sect. 2. Reg. VI. 1831, sect. 6.

Extent of cognizance.

Power to direct subordinate courts ; and to construe the regulations.

1425. The nizamut adawlut are empowered to prescribe the forms and conduct to be observed by the sessions courts, and the magistrates, in all cases provided for by the regulations agreeably to their construction thereof. *Beng. and Ben. Reg. X. 1796, sect. 3. Ced. Prov. Reg. XXII. 1803, sect. 3.*

Orders of court in W. P. not in force in L. P.

1426. Circular orders issued by the Western court are not in force in the lower provinces. Letter of N. A. to Judge of Jessore No. 357, April 8, 1853.

Futwas and sentences.

Sentences of court to be regulated by Mahomedan law.

1427. The sentences of the court are to be regulated by the Mahomedan law, excepting in cases in which a deviation from it may be expressly directed by any regulation passed by the governor general in council. *Reg. IX. 1793, sect. 74. Reg. VIII. 1803, sect. 9.*

Duties of law officers and mode of taking futwas.

1428. The Mahomedan law officers are to assemble at the office of the register three times in every week, or oftener if necessary ; and the register is to lay before them the vernacular copies of the proceedings in the trials, that are referred by the sessions courts for the final sentence of the nizamut adawlut. After duly considering the proceedings, and previous to leaving the office of the register, they are to state in writing, at the foot of the record of each trial, whether the futwa of the law officer is consistent with the evidence, and conformable to the Mahomedan law ; and if it be not, they are to state what futwa ought in their opinion to have been delivered, and to subscribe their names and affix their seals to their respective opinions. The register is to submit the proceedings, in the cases so revised by the law officers, to the nizamut adawlut at their next meeting ; when the court, after perusing the proceedings of the sessions court, and the futwas of the law officers of both courts, is to pass the final sentence. *Reg. IX. 1793, sect. 77. Reg. VIII. 1803, sect. 12.*

A single law officer may give futwa, unless he differs from law officer of sessions court.

1429. Whenever, from the number of trials in reference, it is requisite for their speedy decision that they should be divided among the law officers for revision, it is competent to any one of the law officers to deliver a futwa thereupon. Provided, that if any one of the law officers, on revising the proceedings held upon the trial, does not concur with the law officer of the sessions court, before whom the trial was held, as to the conviction of the prisoner, he is not to write the futwa, until one or more of the other law officers of the nizamut adawlut can deliver the same in concert with him after perusal of the proceedings. *Reg. VIII. 1808, sect. 7.*

But futwa need not be taken in every case. The judges may use their discretion in requiring a futwa.

1430. But it is not necessary that a futwa be filed by the law officers in every case that is referred for the final sentence of the court ; the judge or judges, by whom the proceedings are reviewed, are to exercise their discretion in requiring a futwa or otherwise, as appears to them expedient or necessary, excepting in cases in which exemption from the futwa is prescribed by section 5 of this regulation ; [i. e. cases in which persons not professing the Mahomedan faith claim to be exempted from trial according to the Mahomedan law. See para. 1244.](a) *Reg. VI. 1832, sect. 6.*

(a) Under the above rule the court now never call for a futwa, except when, in a case tried in a sessions court before a law officer, the session judge recommends a sentence of death, or in any special case where a reference is thought necessary. But the rules in sect. 4, *Reg. IX. 1831*, regarding the powers of a single judge, had previously rendered unnecessary the futwas of the law officers of the nizamut adawlut, except in the cases above noted ; for by them (see paras 146 *et seq.*) a

1431. On receipt of the proceedings upon trials referred to the nizamut adawlut in pursuance of section 2 of this regulation [*i. e.* cases in which the session judge differs from the futwa of his law officer] the Mahomedan law officers of that court are to write their futwas thereupon, as in other trials referred under the general regulations. Reg. XVII. 1817, sect. 3.

Futwa in cases referred on account of difference between the session judge and law officer.

1432. In all cases of murder, mutilation, or severe personal injury, in which the heir of the slain, or the person injured, refuses to prosecute, the law officers of the nizamut adawlut are to be called on to declare what the futwa would have been in the event of their having prosecuted; and the judge or judges sitting on such trial are to pass sentence under the general regulations, and on a consideration of all the circumstances of the case, the same as if the parties had come forward to prosecute. Reg. IV. 1822, sect. 3.

If the heir or person injured in cases of murder, wounding, &c. refuses to prosecute.

1433. In all trials transmitted by the sessions courts to the court of nizamut adawlut, in which the Mahomedan law officers of that court consider the prisoner or prisoners liable to discretionary punishment, they are to declare the same generally with a statement of the grounds on which the prisoners are adjudged by them subject to discretionary punishment, leaving the measure of punishment, in such cases, to be determined by the judges of the nizamut adawlut under the provisions contained in this or any other existing regulation. Reg. LIII. 1803, sect. 7, cl. 1.

Futwa of discretionary punishment to be given generally.

1434. The several provisions made by clauses 2, 3, 4, 5, and 6* of section 2 of this regulation for the guidance of the sessions courts, in cases wherein the law officer declares a prisoner or prisoners liable to discretionary punishment; and wherein a specific punishment has been fixed and declared by the regulations; or wherein the specific penalties of the Mahomedan law are withheld, on the ground of the evidence against the prisoner not being such as the law requires for a sentence of *hudd* or *hisas*, though sufficient to convict the prisoner on strong presumptive proof; or wherein the sentence of *hudd* or *hisas* is barred against the prisoner, though fully convicted, by some special exception or distinction, not affecting the nature and criminality of the offence, and evidently repugnant to the principles of equal justice; are to be considered equally applicable to all cases of the same descriptions wherein the law officers of the nizamut adawlut, in any trials before that court, declare the prisoner or prisoners liable to discretionary punishment; and the judges of that court are to pass sentence accordingly, after taking a second futwa from their law officers in cases which may require it. Reg. LIII. 1803, sect. 7, cl. 2.

Rules enacted for sessions courts in regard to discretionary punishment are equally applicable to trials before the nizamut adawlut.

* *v. paras.* 1308 to 1318.

1435. In trials referred to the nizamut adawlut, under cl. 7, sect. 2 of this regulation, viz. when the crime of which the prisoner is convicted, and for which he is declared liable to discretionary punishment, has not been specifically provided for, either by the regulations, or

Discretionary punishment in cases in which the crime has not been provided for by the

single judge may reverse or alter the sentence of the lower court in favor of the prisoner in called-for trials; and may pass any sentence short of death in concurrence with the lower court in referred trials; and is required to send on the case to another judge only when he differs from the session judge as to the conviction, or would pass a higher sentence than the latter recommends; without any reference to the futwa given in the nizamut adawlut. On this account it has been considered unnecessary to give in the text the rules of sect. 4, Reg. XVII. 1817, and sects. 2 and 7, Reg. IV. 1822, which provide for cases in which the judges of the nizamut adawlut would pass sentence of conviction or acquittal in opposition to the futwas of their law officers.

regulations or by the Mahomedan law.

by any stated penalty in the Mahomedan law, the judges of the nizamut adawlut, provided the offence be punishable at discretion under the Mahomedan law, and they are satisfied of the conviction of the prisoner, are authorized to pass such sentence upon the prisoner, not extending to capital punishment, as they may deem adequate to the crime of which he is convicted, and consonant to the general principles of justice, on due consideration of all the circumstances of the case. The court is at the same time to propose to the governor general in council a regulation to fix and declare the specific punishment of any crime of magnitude, which may be found not to have been specifically provided for either by the Mahomedan law or by the regulations, and which may appear to call for an express denunciation of the penalty to be incurred by committing the same. Reg. LIII. 1803, sect. 7, cl. 3.

In such cases of magnitude the court is to propose new regulation to government.

Sentence to be passed in cases of dacoity and theft.

1436. The provisions contained in sections 3, 4, and 5 of this regulation [regarding dacoity and theft] are to govern the sentences of the nizamut adawlut in the cases therein specified; and the judges of that court are authorized to adjudge the stated punishment, whatever may be the futwa of their law officers; provided that it declares the prisoner or prisoners to have been convicted of the crimes incurring the stated penalties either on free and voluntary confession, or on the testimony of credible witnesses, or on strong circumstantial evidence (sufficient to establish *ghalibzuni*, or violent presumption of guilt); and provided the judges of the nizamut adawlut see no cause to disapprove such conviction of the prisoner or prisoners; or to mitigate, or remit the specified punishment. Reg. LIII. 1803, sect. 7, cl. 4.

Rules for carrying into effect the sentence of the court

1437. The register, within three days after passing of the final sentence, or sooner if practicable, is to transmit a copy of it under the seal of the nizamut adawlut, and attested with his official signature, to the session judge, who is immediately to issue a warrant to the magistrate to cause the sentence to be carried into execution. The magistrate, upon the receipt of the warrant, is to cause the sentence to be executed without delay; and to return the warrant to the session judge, with an endorsement attested by his official seal and signature, certifying the manner in which the sentence has been executed. All warrants so returned are to remain in the sessions court, excepting warrants for the infliction of capital punishment, which are to be forwarded by the judges to the nizamut adawlut. Reg. IX. 1793, sect. 78. Reg. VIII. 1803, sect. 13.

Power to call for and revise trials.

Court may call for trials of any subordinate court; but cannot enhance the sentence passed.

1438. It is at all times lawful for the courts of nizamut adawlut to call for the records of any criminal trials of any subordinate court, and to pass upon them such orders as may seem fit. But it is not lawful for the nizamut adawlut in cases so called for, or for any criminal court in appeals preferred to it, to enhance any punishment awarded, or to punish any person acquitted by the court below. Reg. IX. 1807, sect. 24. Act XXXI. 1841, sects. 3 and 4.

Nizamut adawlut how to proceed upon a review of the statements if they consider that the sentence passed could not lawfully be passed;

1439. The nizamut adawlut in any case in which it appears to them, upon a review of the abstract statements or calendars of prisoners punished without reference, that the sentence passed is one which cannot lawfully be passed on a person convicted of the offence as stated in the abstract statement or calendar, are to annul the sentence, and to certify to the subor-

dinate court the sentence or sentences which may lawfully be passed for such offence: and thereupon the subordinate court is to pass a new sentence according to law, and is to amend the record in accordance therewith. Act XIX. 1848, sect. 2.

1440. In any case in which it appears to the nizamut adawlut, upon a review of the abstract statements or calendars of prisoners punished without reference, that the verdict or judgment pronounced on any prisoner was not warranted by the evidence, or that his sentence was too severe, it may, if it thinks fit, require the judge of the court in which the conviction was had to certify under his hand all the evidence taken in the case affecting such prisoners, with any observations which the judge may be desirous of making in explanation of the verdict, judgment, and sentence; and thereupon the nizamut adawlut may annul such verdict, judgment, and sentence if the verdict or judgment appears to it not warranted by the evidence, or mitigate the sentence if it appears too severe; and in either case is to certify its proceedings to the court in which the conviction was had, which is thereupon to make such orders as are conformable to the decision of the nizamut adawlut, and, if necessary, to amend the record in accordance therewith. Act XIX. 1848, sect. 3.

1441. Instead of proceeding under this Act, the nizamut adawlut may, whenever it thinks fit, call for the whole record of any criminal trial in any subordinate court, and pass thereon such orders as it thinks fit, but not so as to enhance the punishment awarded, or to punish any person acquitted in the subordinate court. Act XIX. 1848, sect. 4.

1442. In any jurisdiction, in which a superintendent of police has not been appointed under Act XXIV. 1837, cases of a miscellaneous nature, other than criminal trials, are not cognizable by the nizamut adawlut. In such miscellaneous cases an appeal lies from the magistrate to the commissioner of circuit in his capacity of superintendent of police, whose decisions are not to be open to revision otherwise than on a regular suit in a civil court. Provided, however, that this is not to be held to preclude the government from issuing any orders that they may see fit, consistently with the existing regulations, in any case that may be brought to their notice by the nizamut adawlut or otherwise. Reg. IX. 1831, sect. 3. Act XXIV. 1837, sect. 3.

1443. The interference of the nizamut adawlut in such jurisdiction is restricted by the above to "criminal trials," i. e. cases involving a judicial investigation on a criminal charge and judicial award. In all other cases which are contradistinguished as "miscellaneous cases" the appellate authority is transferred to the commissioner of circuit, with a reservation of a further appeal to the government, in those cases in which the party deeming himself aggrieved may prefer that course, instead of resorting immediately to the civil courts [as in cases of dispossession or other actionable cause], or on which the nature of the case will not admit of the remedy by civil action [as in the case of alleged injustice towards native officers of government by magistrates or others to whom they are subordinate]. For the former the ordinary remedy by suit is provided; for the latter an appeal to government. Const. Nos. 914 and 662.

1444. Orders passed by the subordinate criminal courts in judicial proceedings other than criminal trials are not cognizable or open to revision by the nizamut adawlut, and in

and if they consider the judgment was not warranted by the evidence, or that the sentence passed was too severe;

but the court may call for the whole record, and pass orders thereon.

In a jurisdiction to which a superintendent of police has not been appointed, the court cannot take cognizance of miscellaneous cases.

Government may pass any orders in any case.

Definition of criminal trials and miscellaneous cases in the above.

Orders in judicial proceedings other than criminal

trials, are not open to revision.

regard to such cases the nizamat adawlut possesses no jurisdiction. Such being the case, it cannot assume to itself jurisdiction on the ground that the orders passed by the session judge are unwarranted or irregular. Reports *L. P.* 1851, page 1453.

Revision of case tried by a magistrate.

1445. A trial having been held in Assam before the magistrate, and referred to the nizamat adawlut by the commissioner on a revision of the magistrate's proceedings without holding a fresh trial, it was held competent to the court to pass sentence on the prisoner in the absence of such trial by the commissioner. N. A. R. vol. 5, page 8.

Revision of interlocutory orders to be made at the English sittings.

1446. Cases, in which interference with any order issued by an inferior court, prior to its final judgment in such trials, appears necessary, are to be brought before the court at its general English sittings. Const. No. 662.

Power of mitigation of sentence of subordinate court ;

* v. ¶ 1457.

1447. The powers vested in the nizamat adawlut by sect. 3, Reg. XIV. 1810 [to grant such remission or mitigation of punishment, as appears just and proper, according to the evidence and circumstances of the case, and to pass sentence accordingly*] are applicable to all cases in which that court revises a sentence passed by a sessions court, or magistrate, or assistant to a magistrate, in pursuance of the above, or under any other provision in the regulations. It is also applicable to any cases in which the court of nizamat adawlut sees reason to revise a sentence passed by that court, and to remit any part of the punishment adjudged. But this discretion is not to be exercised without strong and sufficient grounds, to be recorded at large upon the proceedings of the court. Reg. XIV. 1810, sect. 4.

and of their own sentence.

When judges differ in opinion.

Rules for awarding sentence, when the judges differ.

Difference of opinion to be settled by majority.

1448. In a criminal trial, wherein differing opinions have been recorded, the sentence should issue according to the opinions of the majority, as regards each prisoner ; and, where the difference relates merely to the amount of punishment, the most lenient sentence should be adopted. Const. No. 952.

1449. In the event of any difference of opinion arising when three judges are present in court, the voices of the majority are to determine the question ; but if a difference of opinion arises when two judges only are present in court, the question then before the court is to be postponed for adjudication, until a third judge attends. Reg. II. 1801, sect. 13. Reg. VIII. 1803, sect. 5.

Concurrent opinion of two judges is final.

1450. The concurrent opinion of two judges, who agree in all points of the decision, is final and conclusive, though it differs from the opinions of two other judges who do not agree with each other. Const. No. 526. N. A. R. vol. 2, page 121. So, where two judges agreed in the acquittal of the prisoners though on different grounds, the concurrence was held to overrule the opinions of two judges, who would have convicted, but differed as to the amount of punishment to be awarded. Reports *L. P.* 1855, part 1, page 560.

When the judges present cannot decide, the case is to be referred to the other court of nizamat adawlut.

1451. Whenever, and so often as only one judge is present with the Western court, or if any difference of opinion arises when only two judges are present, in any matter requiring under the existing regulations the concurrent voices of two judges, the question is to be referred for the determination of one of the judges of the Calcutta court of nizamat adawlut. Provided, moreover, that, in such case, it is sufficient that the judge, to whom the point is referred, forms and records his judgment on a careful perusal and consideration of the proceedings,

and without requiring the attendance of the parties or their vakeels. Reg. VI. 1831, sect. 7.

1452. Whenever and so often as there are four judges present at the court of nizamat adawlut at Calcutta, and there is an equality of voices in cases which require a decision by the majority, it is competent to refer the question for decision to a judge of the nizamat adawlut in the Western provinces; and it is sufficient that the judge, to whom the point is referred, should form and record his judgment on a careful perusal and consideration of the proceedings, and without requiring the attendance of the parties or their vakeels. Reg. IX. 1831, sect. 9.

1453. In a case of four prisoners charged with dacoity, the second judge voted for the conviction of No. 1, and the acquittal of the other three; the fourth judge for the conviction of all; and the officiating judge for the conviction of No. 1 as a receiver only, and for the acquittal of the other three. Under these circumstances, sentence was issued under the signature of the three judges conformably to the majority of opinions in regard to each individual; No. 1 was convicted of dacoity, and the other three were acquitted. N. A. R. vol. 2, page 40.

Examples of cases in which the judges did not agree as to the sentence to be passed on all the prisoners, and sentence was consequently issued according to the majority of voices in regard to each individual.

1454. In a case of two prisoners, there being three judges for the conviction and one for the acquittal of the first, and two for the acquittal and two for the conviction of the second; another judge took up the proceedings with reference to the latter prisoner only, and being of opinion that he should be acquitted, an order for his release was issued. In deference to the majority, this order was signed by two judges, one of whom had originally given his voice for conviction. N. A. R. vol. 2, page 483. So, in another case, vol. 2, page 485.

1455. In a case of nine prisoners, the court not being able to decide by a majority of voices as to the sentence to be passed on all, one of the judges modified his opinion by reducing the term of imprisonment proposed by him to be awarded to one of the prisoners, in order to admit of the issue against each individual of a sentence by a majority of the court. N. A. R. vol. 3, page 76.

1456. On the trial in the Calcutta Court of two prisoners, charged with murder, three judges were for a sentence of death, and one for a sentence of imprisonment for life, against the first prisoner; and two judges for death, and two for perpetual imprisonment, against the second. The case was referred to the Western Court, when, one judge concurring in sentencing the second prisoner to imprisonment for life, he was sentenced accordingly, and the first prisoner was executed. N. A. R. vol. 4, page 154.

1457. In all criminal trials before the nizamat adawlut, if a prisoner, or prisoners, be in any case, under the provisions of the laws and regulations in force, liable to a more severe punishment than appears to the court equitable, it is competent to two or more judges (but now a single judge under the provisions of sect. 4, Reg. IX. 1831*) to grant such remission, or mitigation of punishment, as appears just and proper, according to the circumstances of the case, and to pass sentence accordingly; provided that in all such cases the court is to record the grounds upon which a remission or mitigation of punishment is adjudged, under

Power of mitigation and pardon.

Power to remit or mitigate the punishment declared by the regulations.

* v. ¶ 1467 *et seq.*

Reason of such to be recorded and notified to the sessions court.

the discretion hereby vested in them ; and they are to communicate the same to the sessions court before whom the trial was held, with directions to cause the same to be made known in open court to the prisoner or prisoners concerned. Reg. XIV. 1810, sect. 3.

The court cannot remit on grounds personal to the prisoner.

1458. The nizamat adawlut are competent to mitigate a sentence on judicial grounds apparent on the record, and strictly connected with the case, and not extraneous. If the ground of mitigation is personal to the prisoner, the prerogative of mercy rests with government. Const. No. 350.

The court may recommend for pardon persons sentenced to death.

1459. When a criminal, who has been sentenced to suffer death, appears to the nizamat adawlut to be a proper object for mercy, they are to submit his case to government ; and, according to the circumstances of it, either recommend a pardon to be granted to him, or such commutation of the punishment as to the court seems proper. Reg. VIII. 1803, sect. 14.

Government may in all cases pardon a person charged with, or convicted of a criminal offence.

1460. Nothing contained in this, or any other regulation, is to be understood to preclude the governor general in council from the exercise of the power reserved to the chief executive authority in all cases, when it appears proper to pardon any person charged with, or convicted of, a criminal offence. In all such cases, a letter from the secretary to government, addressed to the register of the nizamat adawlut, or to any magistrate, or to any other local authority, is to be deemed a sufficient voucher of the pardon thereby notified, and is to be observed accordingly.(a) Reg. XIV. 1810, sect. 6.

Sentence is to be passed in cases recommended to government for pardon.

1461. In cases of clear conviction, when, from considerations of policy or other reasons, it is deemed expedient not to punish the offenders, sentence should be passed, and a reference made to government, before directing execution of such sentence, to afford the government an opportunity of exercising its prerogative of pardon. N. A. R. vol. 5, page 31.

(a) The following cases in which prisoners have been pardoned by government after conviction, are taken from the Nizamut Adawlut Reports :—

A murder was committed in Cuttack on the very day the province was declared subject to the British laws ; the prisoners therefore might, as they pleaded, have been ignorant of the fact ; and in consideration of this circumstance, and of the habits of lawless violence which prevailed with impunity under the Mahratta government, the prisoners were discharged without punishment. Vol. 1, page 106.

A sentinel, in the service of a Mahratta chief who was on a pilgrimage to Benares, was convicted of wilful murder, in cutting down a man (supposed to be a thief) who did not answer to a third challenge, in conformity to a general order to that effect from his superior. The prisoner was pardoned on the consideration that he acted under a mistaken sense of duty. Vol. 1, page 158.

A Rajkoomar was convicted of destroying his infant daughter, and sentenced to suffer death. But, as it appeared that the proclamation for preventing the murder of new-born children, directed by sect. 11, Reg. III. 1804, had not been published in the pergunnah in which the prisoner resided, and as the magistrate had but recently interfered in the police of the pergunnah, so that it was not improbable that the prisoner might have been ignorant of the prohibition of the British government, he was pardoned. Vol. 1, page 209.

An attack was made on a small village in Arracan by a party of hill people of a distinct tribe, in which fourteen persons were murdered, nine others severely wounded, and five carried off into captivity. No probable motive for the outrage was elicited, the suffering party being either really ignorant or disinclined to tell, and the defendants not adducing any. Out of 24 prisoners 15 were convicted and sentenced to death or imprisonment in banishment for 14 years ; but as it seemed clear that the prisoners all surrendered under an implied assurance of their obtaining forgiveness, and that it was quite impossible that they could have been constrained if they had not been persuaded to give themselves up, and as therefore it would have been as unjust as impolitic to carry the judgment into effect, they were pardoned. Vol. 5, page 81.

1462. The sittings of the court are to be held before two or more judges, whenever the number of trials and other business depending before the court may admit of it. But whenever the number of depending trials renders it necessary for their speedy determination that the judges should hold separate sittings, it is competent to any one judge to hold a sitting of the court, and to pass orders or sentence upon any trial under reference to it, in conformity with the regulations; provided that, if the single judge so sitting does not concur with the session judge, before whom the trial has been held, with respect to the conviction of the prisoner, he is not to pass sentence until one or more of the other judges of the court can sit with him upon the trial. Reg. VIII. 1808, sect. 6.

Powers of single judge.

Power of single judge to hold sittings; but if he differs from session judge, the case is to be laid before another judge.

1463. The above provision, which includes all instances of a difference of opinion upon the guilt or innocence of a prisoner, is extended to all cases in which the session judge, before whom the trial has been held, may recommend a mitigation of punishment, upon grounds which a single judge, holding the sitting of the court, deems insufficient. In such cases the opinion of another judge of the nizamat is to be taken upon the mitigation proposed by the session judge; and in giving such opinion he is to examine the proceedings upon the trial as far as is necessary to enable him to form a judgment upon the stated grounds of mitigation. Reg. XVII. 1817, sect. 17.

So, if the sitting judge does not concur in the mitigation proposed by the session judge.

1464. The above rule authorizes a sitting of the court before a single judge (when two or more judges are not able to attend) upon miscellaneous references to or from the sessions courts and magistrates, upon petitions receivable by the nizamat adawlut, and generally upon all matters appertaining to the cognizance of that court under the regulations in force. But a single judge cannot in any case by his single authority reverse or alter a former decision or order of one or more of the judges of the court. Reg. XXV. 1814, sect. 17.

A single judge may hold sittings on miscellaneous business;

but cannot reverse or alter a former decision of the court.

1465. When a session judge, referring a criminal trial to the nizamat adawlut, states circumstances of extenuation, or other special grounds for a mitigation of punishment, in behalf of any prisoner or prisoners, and a single judge of the nizamat, holding the sitting of that court, concurs in the mitigation of punishment recommended by the sessions judge, it is

Power of single judge if he concurs in the mitigation of punishment recommended by the session judge.

In the following case the nizamat adawlut remitted the punishment on judicial grounds:—A prisoner was convicted on violent presumption of being an associate in Wuzoor Ali's conspiracy. But the orders of government on a former and similar occasion having given him hopes of exemption from punishment, and the evidence showing some extenuating circumstances in his favor, orders were issued for his release. Vol. 1, page 227.

The two cases quoted beneath are apparently opposed to the rule of Const. No. 350 (para. 1458), as the sentences of punishment were in both remitted on grounds purely personal to the prisoner; but they are probably not considered precedents, as that construction was ruled subsequently to the dates of both:—A prisoner was convicted of cutting off his wife's hand under the impulse of anger; but it appeared that he had just cause for anger, and that the actual violence was unintentional; and the wife earnestly entreated that her husband should be pardoned. Under these circumstances, and as the futwa declared the prisoner unconditionally released from every penalty in consequence of the injured party withdrawing her claim, he was discharged without punishment. Vol. 1, page 344.

Two females were convicted with their husbands of knowingly receiving stolen property; but from the influence known to be exercised by husbands over their wives, and under a futwa of discretionary punishment, the court did not think fit to award the females any punishment. A third female, aged 70 years, was convicted of the same offence, and released in consideration of her age and infirmities. Vol. 1, page 358.

competent to the judge so concurring to grant the proposed mitigation, and to pass sentence accordingly; in like manner as two judges are competent to grant a mitigation or remission of punishment, whenever it appears just and proper, under the provisions of sect. 3, Reg. XIV. 1810.* Reg. XVII. 1817, sect. 18, cl. 1.

* v. ¶ 1457.

If a single judge deems it just and proper to mitigate, though not recommended by session judge.

1466. A single judge of the nizamat, holding the sitting of that court on a criminal trial, is further declared competent to mitigate or remit any part of the prescribed punishment, if it appears to him just and proper on the grounds stated in the above provision, although a mitigation or remission is not proposed by the judge referring the trial; but in such cases the grounds on which a mitigation or remission of punishment is granted, are to be recorded and communicated to the sessions court for the information of the prisoner or prisoners concerned. Reg. XVII. 1817, sect. 18, cl. 2.

Single judge may reverse or alter the sentence of the lower court in favor of the prisoner.

1467. It is competent to a single judge, on a revision of the proceedings held on any criminal trial by any court of inferior jurisdiction, to reverse or alter the sentence or order passed thereon, provided such reversal or alteration is in favor of the accused, whether for acquittal, mitigation of punishment, or otherwise, and does not enhance the punishment to which he has been sentenced. Reg. IX. 1831, sect. 4, cl. 2.

Example.

1468. In a trial for murder the law officer of the circuit court acquitted the prisoner; the commissioner dissenting referred the trial with his opinion that the prisoner was guilty of affray with homicide; the law officer of the nizamat also acquitted; but the judge, who revised the trial, deemed the prisoner convicted of manslaughter. The court held that he was competent to dispose of the case without calling in another judge. Const. No. 674.

When case is referred, because the session judge differs from the law officer in regard to some only of the prisoners.

1469. Whenever a criminal trial is referrible to the nizamat adawlut by reason of the commissioner of circuit or session judge differing in opinion with his law officer as to the conviction or acquittal of one or more prisoners included in the same trial, the sentence in which in regard to the other prisoners is within his competence under the regulations in force, it is necessary for the nizamat adawlut, or for a single judge of that court, to revise only such parts of the proceedings on the trial as relate to the prisoner or prisoners in respect to whom the reference is made. Reg. IX. 1831, sect. 4, cl. 3.

Single judge may convict or acquit in concurrence with the session judge except for capital punishment.

1470. If a single judge of the nizamat adawlut concurs in opinion with the commissioner of circuit or session judge, whether for conviction or acquittal, it is competent to such single judge to pass a final sentence, whatever may be the futwa of the law officers of the nizamat adawlut, except for capital punishment, which as heretofore, in all cases, requires the concurrent opinion of two judges of the court. Reg. IX. 1831, sect. 4, cl. 4.

But single judge cannot convict in opposition to session judge;

1471. Provided, however, that it is not competent to a single judge to convict and sentence to punishment any prisoner in opposition to the opinion of the commissioner or sessions judge, if the latter is for acquittal, or otherwise in favor of the prisoner. Reg. IX. 1831, sect. 4, cl. 5.

in such case he should send on the trial to another judge.

1472. It is not competent to a single judge to convict and sentence to punishment any prisoner recommended to be acquitted by a session judge against the opinion of the law officer for conviction. If the opinion of the judge of the nizamat adawlut be for conviction,

the case is to be sent on for the concurrence of another judge of the court. Resolution, N. A., August 13, 1852.

1473. In the cases above referred to, the nizamat adawlut is not precluded from revising the whole proceedings, if there appear sufficient grounds for so doing. Reg. IX. 1831, sect. 4, cl. 6.

Nizamut adawlut may revise the whole proceedings.

1474. A single judge may always, in any case of difficulty or importance in which he deems it expedient and proper that the matter at issue should be decided by two or more judges of the court, record his opinion thereon, and refer the case to another judge. Reg. IX. 1831, sect. 4, cl. 7.

Single judge may always require the opinion of his colleagues.

1475. In trials referred to the nizamat adawlut, which include one or more prisoners liable to a sentence of death, it is not competent to a single judge to pass the final sentence, which in all such cases is to be passed by at least two concurring judges of that court. Reg. XII. 1825, sect 8.

Sentence of death cannot be passed by a single judge.

1476. The jurisdiction of the presidency court of nizamat adawlut over the province of Benares, and the ceded and conquered provinces, having been transferred by Reg. VI. 1831 to the Western court, it was held that the latter court possesses the whole of the powers, in regard to the revision of orders and sentences passed by the court at the presidency before the enactment of that regulation, which could have been exercised by the latter previously to the separation of the jurisdictions. Const. No. 799.

Interference with former order of the court.

How far the court may modify or annul any previous order or sentence of the court.

1477. The judges of the Western court are competent, whenever it appears advisable on the representation either of one of their own body, or any other constituted criminal authority, to revise, in full court, the proceedings of one or more judges in any case connected with the districts under their jurisdiction, as well as to modify or annul the sentence or order previously passed, either on the grounds of additional evidence or other circumstance throwing a new light on the case, or generally with reference to the previous decision, provided that no sentence of a criminal court can be modified to the prejudice of the prisoner or prisoners included in it. If the judge, or any of the judges who passed the original sentence, be present, the revision is to be made by him; provided that, if two or more judges concurred in the order or sentence, and any of them is not present, the case must be brought before the whole court, if it is proposed to modify or annul the order or sentence. Const. No. 819.

Rule of the Western court.

If the judge who passed the original sentence is present; or, if absent.

1478. This rule does not hold in the Calcutta court, by whom Const. No. 819 was rescinded; the court resolving that when review of a criminal order passed by a judge of the court, present at the time of the application, is applied for, it shall be disposed of by him, without reference to the other judges of the court. If the application be for a review of an order passed by a judge absent on leave, or no longer attached to the court, the provisions of sect. 17, Reg. XXV. 1814* shall be the rule of procedure. C. O. No. 67 of vol. 4, L. P.

Rule of the Calcutta court.

* See para. 1464.

1479. A petition having been presented to the nizamat adawlut, praying for the release of a prisoner formerly sentenced by the court, it was held that they had no power to interfere with the sentence on the ground of their entertaining a difference of opinion as

But former sentence cannot be altered on the ground that the present court differs as to

the merits of the case. to the merits of the case, or as to the quantum of punishment awarded. N. A. R. vol. 2, page 477.

A single judge, finding that he had passed sentence on an exaggerated statement, modified it with the consent of his colleagues.

1480. In a case, where a prisoner had evaded justice at the time when his accomplices were tried, but on his being afterwards apprehended and brought to trial circumstances came out which induced the belief that the offence previously charged had been exaggerated, it was decided that the judge, who passed sentence on the first trial, was competent, with the concurrence of his colleagues, to revise or modify the order passed by him without the interference of another judge. N. A. R. vol. 4, page 246.

The court would not order the re-apprehension of persons sentenced 15 years before for affray, when they ought to have been punished for murder.

1481. On the reference of a case of assault and murder perpetrated 15 years before, it was discovered that two prisoners implicated in the same transaction had been regularly tried, convicted, and sentenced to only one year's imprisonment, and that the sentence had been reported, as prescribed, to the nizamut adawlut, and confirmed as for a case of simple affray; the court held that it was not expedient to direct their re-apprehension with a view to their being tried and sentenced to a punishment adequate to the real merits of the case. N. A. R. vol. 3, page 164.

Miscellaneous.

Power of nizamut adawlut to suspend a session judge; and course of procedure when a session judge or magistrate, or other covenanted officer, is guilty of disobedience, neglect, &c.

* r. ¶ 1119.

† r. ¶ 781.

1482. The nizamut adawlut is empowered to suspend from office any session judge, or magistrate, for wilful disobedience, or neglect of or false return to any process, rule, or order of that court; such suspension to be notified within ten days, with all relative proceedings and papers, for the determination of government. The nizamut adawlut is further authorized and directed to proceed upon reports from the session judges of neglect or misconduct by the magistrates, made in pursuance of sect. 63, Reg. IX. 1793 (*Ced. Prov.* sect. 30, Reg. VII. 1803)*; as well as upon reports from the session judges, and magistrates, of neglect or misconduct by their assistants, made in pursuance of sect. 10, Reg. XIII. 1793 (*Ced. Prov.* sect. 13, Reg. XII. 1803);† in which cases, after such inquiry as is judged necessary, in proof or explanation of the circumstances stated, the court is to report the case, if it appears to require the notice of government, with a copy of all proceedings and papers received on the subject of it, for such orders as may be judged proper. And in all cases wherein a covenanted servant of the Company employed in any of the criminal courts, or in any office of police, appears to the nizamut adawlut to have been guilty of neglect of duty, or of other misconduct, not expressly provided for by the regulations, that court is either to report the same to government; or, if the case appears to involve an error of judgment only, or a slight default, for which an admonition of the court is deemed a sufficient correction, to advise the party of his default, and to admonish him accordingly. Reg. II. 1801, sect. 14. Reg. VIII. 1803, sect. 24.

Order of court is not binding on civil court.

1483. A summary order of the nizamut adawlut to the magistrate is not binding on the civil courts. Const. No. 609.

The court would not cancel a decree of a civil court proved in a criminal trial to have been obtained by fraud.

1484. It appearing in the course of a criminal trial, that a decree had been obtained in a civil suit by means of fraud, the court did not think proper to cancel the decree; but directed that the parties, against whom it had been obtained, should be furnished, on their application, with a copy of their sentence for presentation to the court of appeal, which court

could then use their own discretion in passing such orders as might prevent an unjust execution. N. A. R. vol. 3, page 93.

1485. The vakeels of the sudder dewanny adawlut may present petitions to the nizamat adawlut. Const. No. 563. Vakeels.

1486. The nizamat adawlut is, from time to time, as circumstances require, to prescribe the forms, and to fix the periods of transmission, and mode of preparation of all reports, calendars, registers, or other statements, to be furnished by the criminal courts, or by the judicial or police officers. But this is not to be construed to supersede the necessity of the preparation and transmission of the reports and statements prescribed by the regulations, until the nizamat adawlut specially prescribes any alteration in, or directs the discontinuance of, any particular report or statement. Reg. VII. 1829, sect. 3. The nizamat adawlut is to prescribe reports, statements, &c.

1487. *First.* All precepts are to be drawn out in prescribed forms.* *Second.* All orders directing the issue of precepts are to state whether a return is required, and within what period. *Third.* The period is to be calculated from the date of the despatch of the precept from the office of the nizamat adawlut. *Fourth.* Precepts and returns are to bear the dates of despatch, and not the dates of the proceedings which accompany them, and the subordinate courts are expected to despatch their returns within the period allowed. *Fifth.* When a judge of the nizamat adawlut has signed a chittah, directing the issue of a precept, it is the duty of his peshkar to prepare a copy of the roobakaree, duly attested by his signature, together with such other papers as should accompany the same, and to send them by a mohurir to the English clerk in the precept department within seven days from the date on which the chittah was signed by the judge. The roobakaree is to bear a list of the accompanying papers at the foot of it; and the peshkar is responsible that they are correct and complete. *Sixth.* The English clerk is to note on each proceeding the date of receipt, and after preparing the precepts to submit them for the register's signature; he is then to enter them in the proper books, and to despatch them on the same day, if possible; if not despatched till the next day, or later, the date of the precepts is to be altered to correspond with that of despatch. *Seventh.* If the officer to whom the precept is addressed finds it impracticable to send a complete return within the prescribed period, he is to transmit a proceeding, with a certificate, according to the prescribed form,† stating the reasons, and the additional period which he requires to carry the court's orders into effect. *Eighth.* Such returns and certificates, when received in the office of the nizamat adawlut, are to be sent by the precept clerk, after having been endorsed and entered in the proper books, to the peshkar of the judge by whom the precept was issued, who is to note on each the date of receipt, and to bring it forward in the usual course. *Ninth.* If the period allowed in a precept together with the number of days occupied by the letter dāk, expire before a return, or explanatory proceeding and certificate is received, the register is to send a letter calling for explanation within a specified term; should this term also expire without receiving a reply, the circumstance is to be brought to the notice of the judge who issued the order, for such further measures, as he deems advisable. *Tenth.* The officer, by whom a return or certificate is sent, is to cause a list of the papers which accompany it to

Precepts.

Rules for the issue of precepts to subordinate courts, and for returns thereto; prescribing forms—of a precept calling for proceedings with return;—a precept requiring no return;—a certificate when a full return cannot be submitted within the prescribed period;

* v. Appendix A. Nos. 56 and 57.

† v. Appendix A. No. 59.

be written at the foot of the roobakaree. *Eleventh.* If the papers, &c., which should accompany a precept or return, are too heavy for the letter dāk, they are to be sent by dāk banghy, with a note stating the case and the precept or return to which they belong; the precept or return itself with the proceedings of the court being sent as usual by the letter dāk. *Twelfth.* The precept clerk is to submit to the register, at the close of each week, a list of unanswered precepts and letters, to which returns are due. C. O. Nos. 160 and 174 of vol. 2.

and a reply to a precept requiring no return.

1488. Whenever a session judge finds it necessary to make a reference to the court connected with precepts not requiring returns, for the purpose either of communicating any information or remarks, or of requiring further instructions, he is to adopt a prescribed form.* C. O. No. 212 of vol. 2.

* v. Appendix A. No. 58.

SECTION XXXIII.

OF SENTENCE OF TRANSPORTATION OR BANISHMENT.

The nizamat adawlut may sentence to transportation any person sentenced to imprisonment for life.

1489. The nizamat adawlut are authorized, under the discretion in this respect allowed by the Mahomedan law, to order any prisoner, sentenced to imprisonment for life, to be transported to some place beyond sea; and the magistrates, at every jail delivery, are to cause a written proclamation to be read, and affixed in their cutcherries, as well as in the cutcherries of their police officers, notifying that all persons who are sentenced to be confined for life for murder, dacoity, robbing, plundering, arson, or any other crime of a heinous nature, are liable to transportation to some place beyond sea by order of the nizamat adawlut. Reg. IV. 1797, sect. 10. Reg. VIII. 1803, sect. 18.

And should always sentence to transportation, unless there are special reasons.

1490. Whenever the sudder court sentences any offender to imprisonment for life, it is at the same time to sentence such offender to transportation beyond sea for life, unless there are special reasons inducing the court to think such prisoner not a proper subject for transportation, which special reasons the court is to record. Act XIV. 1844, sect. 1.

If session judge sentences to, or recommends, a sentence of imprisonment for life, a single judge of the nizamat adawlut is to pass sentence of transportation.

1491. Whenever any offender has been sentenced in the first instance by a commissioner of circuit, or session judge, to imprisonment for life, or whenever a commissioner of circuit or session judge has recommended that sentence of imprisonment for life be passed upon any offender, it is competent to a single judge of the sudder court, and he is directed, to sentence such offender at the same time to transportation beyond sea for life, unless there are special reasons inducing him to think such offender not a proper subject for transportation, which special reasons he is to record. Act XIV. 1844, sect. 2.

Convicts cannot be transported for a limited period. Session judge always to add trans-

1492. Transportation beyond sea is restricted to convicts sentenced to confinement for life; and in all instances wherein a session judge passes a sentence of confinement for life against a prisoner, he is at the same time, if he deems the prisoner a proper object of trans-

portation beyond sea, to adjudge him or her to be transported for life. Reg. LIII. 1803, sect. 8, cl. 2.

portation to imprisonment for life.

1493. It is not competent to the nizamut adawlut (except in the exercise of their general powers of mitigation, where they may deem the object worthy of it) to exempt from transportation an individual convicted of an offence for which the regulations specifically prescribe that punishment. N. A. R. vol. 3, page 1.

The court cannot exempt from transportation except in the way of mitigation.

1494. Imprisonment in transportation beyond sea for life, is considered a more severe sentence than imprisonment for life in the Alipore jail. N. A. R. vol. 5, page 80.

Transportation a more severe sentence than imprisonment for life.

1495. In the cases of convicts sentenced to confinement for life, whom the courts of sessions and nizamut adawlut do not consider proper objects of transportation beyond sea under the above provisions; as well as in all cases of convicts sentenced to imprisonment for a limited period; the court by whom the sentence is passed, if it deems the same proper on consideration of the prisoner's offence, may adjudge him to be banished, during the period of his sentence, from the district in which his place of abode is situated, and to be kept to hard labor on the public roads, or other public works, in any other district, to which he may be removed. Reg. LIII. 1803, sect. 8, cl. 2.

Convicts not considered proper objects of transportation, or imprisoned for a limited period, may be sentenced to banishment.

1496. Magistrates are not competent, under the regulations, to sentence vagrants, or persons convicted of specific offences, to expulsion from the British territories, or to banishment from the city or district in which they have been apprehended. C. O. No. 159 of vol. 1.

Magistrates cannot sentence any person to banishment.

1497. As soon as any offender shall be delivered to the person or persons to be appointed by the governor general in council on that behalf at the place to which he is transported, the property in the service of such offender shall be vested in such person or persons during the term of transportation. Act XVI. 1840, sect. 1.

Management of convicts transported.

Property in service of, vested in whom.

1498. It shall be lawful for the governor general in council to appoint the governor or other authority at any place within the territories of the East India Company, or to appoint one or more superintendents at any such place, as the persons to whom convicts undergoing transportation shall be delivered and in whom the property in the service of such convicts shall be vested as aforesaid. Act XVI. 1840, sect. 2.

Government to appoint persons in whom property is to be vested.

1499. It shall be lawful for the governor general in council to issue orders from time to time to any such governor, authority, or superintendent, and which orders are hereby required to be duly executed, and to frame rules touching the classification of convicts, their confinement, treatment, and discipline, and touching such moderate correction as may be necessary in cases of misbehaviour and disorderly conduct, and of neglect or disobedience in the service of those persons in whom the property of such service may be vested as aforesaid. Act XVI. 1840, sect. 3.

Government to issue orders and rules regarding management.

1500. All persons who have heretofore been transported to any place within the territories of the East India Company, and whose terms of transportation are not yet expired, shall be subject to the provisions contained in this Act, and nothing heretofore done with respect to offenders who have been so transported in conformity with the provisions of this

Persons previously transported liable to this Act.

Act, or by the orders or with the sanction of government, shall be called in question in any court of law. Act XVI. 1840, sect. 4.

Penal servitude.

No European or American to be sentenced to transportation.

Terms of penal servitude instead of the present terms of transportation.

1501. No European or American shall be liable to be sentenced or ordered, by any court within the territories in the possession and under the government of the East India Company, to be transported. Act XXIV. 1855, sect. 1.

1502. Any person who, but for the passing of this Act, would, by any law now in force, or which may hereafter be in force, in any part of the said territories, be liable to be sentenced or ordered, by any such court, to be transported, shall, if a European or American, be liable to be sentenced or ordered to be kept in penal servitude for such term as is hereinafter mentioned. The terms of penal servitude to be awarded by any sentence or order, instead of the term of transportation to which any such offender would, but for the passing of this Act, be liable, shall be as follows: (that is to say:)—instead of transportation for seven years, or for a term not exceeding seven years, penal servitude for the term of four years:—instead of any term of transportation exceeding seven years, and not exceeding ten years, penal servitude for any term not less than four and not exceeding six years:—instead of any term of transportation exceeding ten years and not exceeding fifteen years, penal servitude for any term not less than six and not exceeding eight years:—instead of any term of transportation exceeding fifteen years, penal servitude for any term not less than six and not exceeding ten years:—instead of transportation for the term of life, penal servitude for the term of life. And in every case where, at the discretion of the court, one of any two or more of the terms of transportation hereinbefore mentioned might have been awarded, the court shall have the like discretion to award one of the two or more terms of penal servitude hereinbefore mentioned, in relation to such terms of transportation. Act XXIV. 1855, sect. 2.

Discretion of courts as to alternative punishments not to be affected.

1503. Provided always that nothing herein contained shall interfere with or affect the authority or discretion of any court in respect of any punishment which such court may now award or pass on any offender other than transportation; but where such other punishment may be awarded at the discretion of the court instead of transportation or in addition thereto, the same may be awarded instead of, or (as the case may be) in addition to, the punishment substituted for transportation by this Act. Act XXIV. 1855, sect. 3.

Effect of pardon granted upon condition of penal servitude.

1504. If any offender sentenced by any court within the said territories to the punishment of death shall have mercy extended to him, upon condition of his being kept in penal servitude for life, or for any term of years, all the provisions of this Act shall be applicable to such offender in the same manner as if he had been lawfully sentenced under this Act to the term of penal servitude specified in the condition. Act XXIV. 1855, sect. 4.

The executive government may direct Europeans or Americans under sentence of transportation to be kept in penal servitude.

1505. It shall be lawful for the governor general of India in council, or for the person or persons for the time being administering the executive government of any presidency or place in which a European or American has been lawfully sentenced by any court to be transported, to order such person to be kept in penal servitude for the shortest term of penal servitude substituted by this Act for a term of transportation of the same extent as that to which the offender was sentenced, or that portion thereof which he shall not have undergone,

provided that no person shall be kept in penal servitude under the provisions of this section after the expiration of the term of transportation to which he was sentenced. Act XXIV. 1855, sect. 5.

1506. Every person who, under this Act, shall be sentenced or ordered to be kept in penal servitude, may, during the term of the sentence or order, be confined in any such prison or place of confinement within any part of the said territories as the governor general of India in council shall, by any general order, from time to time, direct; and may, during such time, be kept to hard labour; and such person may, until he can conveniently be removed to such prison or place of confinement, be imprisoned, with or without hard labour, and dealt with in all other respects in the same manner as persons sentenced by the convicting court to imprisonment with hard labour may, for the time being, by law be dealt with. Provided that the time of such intermediate imprisonment, and the time of removal from one prison to another, shall be taken and reckoned in discharge or part discharge of the term of the sentence. Act XXIV. 1855, sect. 6.

Persons under sentence of penal servitude where to be sent and how to be dealt with.

Intermediate imprisonment.

Proviso.

1507. All Acts and Regulations now in force within any part of the said territories, with respect to convicts under order or sentence of transportation, or under order or sentence of imprisonment with hard labour, shall, so far as may be consistent with the express provisions of this Act, be construed to extend and be applicable to persons under any order or sentence of penal servitude made or passed under this Act. Act XXIV. 1855, sect. 7.

All Acts, &c., respecting convicts under sentence of transportation or imprisonment with hard labour made applicable for the purposes of this Act.

1508. The person or persons for the time being administering the executive government of the presidency or place, in which any European or American convict is imprisoned under a sentence or order of imprisonment for a term exceeding one year, whether with or without hard labour, may, with the consent of the governor general of India in council, order the removal of such prisoner from the prison or place in which he is confined to any other public prison or place of confinement within any part of the said territories; and such order shall be a sufficient authority for imprisoning the convict during the remainder of the term mentioned in the sentence, or any part of such term, in the jail to which the prisoner is removed. Act XXIV. 1855, sect. 8.

Removal of European or American convicts under sentence of imprisonment from one prison to another.

1509. It shall be lawful for the governor general of India in council to grant to any convict, who may hereafter be sentenced or ordered to be kept in penal servitude, a license to be at large within the said territories, or in such part thereof as in such license shall be expressed, during such portion of his term of servitude, and upon such conditions in all respects as to the governor general of India in council shall seem fit; and it shall be lawful for the said governor general in council at any time to revoke or alter such license by a like order. Act XXIV. 1855, sect. 9.

Governor general in council may grant a license to be at large to any convict under sentence of penal servitude.

1510. So long as such license shall continue in force and unrevoked, such convict shall not be liable to imprisonment or penal servitude by reason of his sentence, but shall be allowed to go and remain at large according to the terms of such license. Act XXIV. 1855, sect. 10.

Holder of such license not to be imprisoned, &c.

1511. In case of the revocation of any such license as aforesaid, it shall be lawful for one of the secretaries to the government of India by order in writing, to signify to any

If license revoked, the convict may be apprehended.

ed and committed
to prison.

justice of the peace or magistrate that such license has been revoked, and to require such justice or magistrate to issue a warrant for the apprehension of the convict to whom such license was granted, and such justice or magistrate shall issue his warrant accordingly ; and such warrant may be executed by any officer to whom it may be directed or delivered for that purpose in any part of the said territories, and shall have the same force and effect in any place within such territories as if the same had been originally issued, or subsequently endorsed by a justice, or magistrate, or other lawful authority, having jurisdiction in the place where the same shall be executed ; and such convict, when apprehended under such warrant, shall be brought, as soon as he conveniently may be, before the justice or magistrate by whom the said warrant shall have been issued, or some other justice or magistrate of the same place, or before a magistrate or justice having jurisdiction in the zillah or district in which such convict shall be apprehended ; and such justice or magistrate shall thereupon make out his warrant under his hand and seal for the re-commitment of such convict to the prison or place of confinement from which he was released by virtue of the said license ; and such convict shall be re-committed accordingly, and shall thereupon be liable to be kept in penal servitude for such further period as, with the time during which he may have been imprisoned under the original sentence or order, and the time during which he may have been at large under an unrevoked license, shall be equal to the period mentioned in the original sentence or order. Act XXIV. 1855, sect. 11.

Penalty for
breach of condition
of license.

1512. If a license be granted under section 9 of this Act upon any condition specified therein, and the convict to whom the license is granted violate any such condition, or shall go beyond the limits specified in the license, or, knowing of the revocation of such license, shall neglect forthwith to surrender himself, or shall conceal himself or endeavour to avoid being apprehended, he shall be liable, upon conviction, to be sentenced to penal servitude for a term not exceeding the full term of penal servitude mentioned in the original sentence or order. Act XXIV. 1855, sect. 12.

What to be deemed
proof that a per-
son is a European
or an American.

1513. Any sentence or order upon any person describing him as a European or American shall be deemed, for the purposes of this Act, to be conclusive of the fact that such person is a European or American within the meaning of this Act. Act XXIV. 1855, sect. 14.

Construction of
Act.

1514. The word "European," as used in this Act, shall be understood to include any person usually designated a European British subject. Words in the singular number or the masculine gender shall be understood to include several persons as well as one person, and females as well as males, unless there be something in the context repugnant to such construction. Act XXIV. 1855, sect. 15.

SECTION XXXIV.

OF CONTEMPT OF COURT.

1515. All persons whatsoever, whether generally amenable to the courts of the East India Company, or otherwise, using menacing gestures or expressions, or otherwise obstructing justice in the presence of any magistrate, joint magistrate, or other officer under a magistrate empowered to try criminal cases, or any superior or inferior court, civil or criminal, of the East India Company, are liable to be fined by the authority whose proceedings are obstructed to any amount not exceeding 200 rupees, or in case such fine is not paid to be imprisoned for any period not exceeding one month. Provided that from the award of punishment in such cases an appeal may lie, if preferred within one month, to the authority civil or criminal, appointed by law to hear appeals in all other cases from the decisions of the officer by whom the fine was imposed. And provided also that notwithstanding anything in this Act it is lawful to indict any person amenable to Her Majesty's supreme courts as for a misdemeanor in any of the cases aforesaid sustainable before this Act, if no proceeding has been had against the offender in the court where the offence was committed, but not otherwise. Act XXX. 1841, sect. 1.

Persons are punishable for using menacing gestures or expressions, or otherwise obstructing justice in open court.

Appeal from award of punishment in such cases.

Persons amenable to supreme court may be punished under this Act, or indicted.

1516. The revenue authorities may also in such cases impose a fine of 200 rupees, or one month's imprisonment in the civil jail in lieu thereof. Such orders, as well as sentences passed under the above section, are to be carried into effect by the magistrate, on application being made to that officer, in the usual mode. Act XXX. 1841, sect. 2.

The magistrate is to carry into effect the awards of revenue authorities.

1517. Evasion of a magistrate's process is not punishable as a contempt under the above provisions, which are applicable solely to contempts committed in open court.(a) Const. No. 619.

Evasion of process is not punishable as a contempt.

1518. Under the above provisions, which repeal so much of Reg. XII. 1825, as relates to contempt of court, a person is no longer punishable as for that offence (as is ruled in Const. No. 1098) who, in a petition to a session judge in appeal from the orders of a magistrate, falsely and maliciously asperses the character of that officer. See Index to the constructions heading "contempt," No. 3, page 25.

Nor falsely aspersing the character of a public officer in a petition.

1519. The above Act is the only law under which contempt of court can now be punished, and as wilful and designed prevarication in a witness does not appear to be correctly classable under the "obstructions to justice," rendered punishable by the above enactment, that offence cannot be punished as a contempt of court; and Const. No. 1177 is rescinded. C. O. No. 128 of vol. 3.

Nor prevarication in a witness.

(a) The above is a construction of Reg. XII. 1825, but is equally applicable to Act XXX. 1841. For rules regarding evasion of process, see the section on that subject in the next chapter.

Contempts out of court are not punishable.

1520. Where a person went to the house of a deputy magistrate to prefer a complaint, instead of going to the catcherry, and the deputy magistrate fined him as for a contempt, the order was reversed as manifestly illegal and unjustifiable. Reports *L. P.* 1855, part 2, page 191.

SECTION XXXV.

OF COMPROMISE, AND IBRA.

Compromise.

No private compromise is to be received by a magistrate in heinous crimes.

1521. Excepting in cases of a trivial nature, such as abusive language, slight trespasses, and inconsiderable assaults or affrays, no razeenamah is to be received without the special sanction of the magistrate; nor is any private compromise to be admitted by the magistrate in crimes of a heinous nature, such as on conviction require exemplary punishment for the ends of public justice. Reg. IX. 1807, sect. 8.

Or by any other court.

Nor can a session judge admit a formal compromise of any case after commitment.

1522. The principle of the prohibition, contained in the above clause, is applicable to, and obligatory upon, the whole of the criminal courts. A session judge, therefore, would not be justified in admitting a compromise in crimes of such serious nature; especially crimes recognised as such in the regulations, and when it has been expressly directed that the offenders should be brought to trial before the criminal courts. Nor can he in any case admit a formal razeenamah to bar the trial of a commitment made by a magistrate; both as there is no provision for such in the existing regulations, and as the established practice of discharging the prisoner on acquittal, when evidence is not adduced for his conviction, and the ends of public justice do not require a postponement of the trial for further evidence, appears preferable to the admission of a compromise, which might perhaps leave the prisoner exposed to a future prosecution. C. O. No. 187 of vol. 1.

The Mahomedan law allows the ruling power to reject.

1523. The Mahomedan law recognises the right of the ruling power to punish serious offences for the ends of justice, although the injured individual waives his private claim. N. A. R. vol. 1, page 367.

Police officers cannot admit.

1524. The darogahs and other police officers are prohibited from admitting compromises or razeenamahs in any cases. Reg. XX. 1817, sect. 12, cl. 3.

If case remanded, magistrate cannot admit compromise.

1525. A magistrate has no authority to accept a compromise in a case which has been remanded to him only for the taking of fresh evidence to be reported to the session judge. Letter of Nizamut Adawlut to Judge of Rajshahye, No. 1021, July 29, 1852.

In a case of theft, magistrate need not regard.

1526. Notwithstanding a private compromise of theft, the magistrate may, if he think proper, direct a public prosecution. Const. No. 318. And in a petty case can refuse to dispose of a case on the filing of a razeenamah, if he is not satisfied that it is given voluntarily. Reports *L. P.* 1855, part 2, page 189.

Civil courts cannot enforce the terms of a compromise between a thief and the person robbed.

1527. A compromise between a thief and the owner of the property, the consideration being on the one side forbearing to prosecute, and on the other restitution of the stolen property, is a contract to which the civil court cannot give effect. Const. No. 318.

1528. In a case of rape the court sentenced the prisoner to punishment, although a *razeenamah* was filed by the injured party in consequence of the prisoner's promise to marry her, as in so heinous an offence a compromise was deemed inadmissible. N. A. R. vol. 3, page 127.

It was declared inadmissible in a case of rape;

1529. A private compromise was held to be inadmissible in a case of forcible abduction of a young girl involving a serious breach of the peace. Reports *L. P.* 1852, part 1, page 716.

and in a case of abduction.

1530. In all cases of murder, mutilation, or severe personal injury, in which the heir of the slain, or the person injured, refuses to prosecute, the law officers of the *nizamut adawlut* are to be called on to declare what the *futwa* would have been, in the event of their having prosecuted; and the judge or judges sitting on such trial are to pass sentence under the general regulations, and on a consideration of all the circumstances of the case, the same as if the parties had come forward to prosecute. Reg. IV. 1822, sect. 3.

IBRA.

In serious cases of bodily injury, the *nizamut* may punish notwithstanding the *ibra* of the prosecutor.

1531. The *nizamut adawlut* pay no regard to the circumstance of a prosecutor waiving his demand of *kisas* against the prisoner. N. A. R. vol. 1, page 86.

The *nizamut* would not admit *ibra* of *kisas*.

1532. The prosecutor, in a trial for murder, having expressed in the sessions court his unwillingness to proceed with the charge against the prisoner, it was held that such declaration did not vitiate the trial. The court however were of opinion that, on such declaration being made, the session judge should have directed the magistrate to issue the necessary instructions to the government pleader to carry on the prosecution. N. A. R. vol. 5, page 172.

The *ibra* of the prosecutor does not vitiate the trial; but the government pleader should be ordered to prosecute.

1533. In the case of a prisoner cutting off his wife's hand, the law officers of the *nizamut adawlut* convicted him of the offence charged, but declared him unconditionally released from every penalty, in consequence of the injured party withdrawing her claim. Under the peculiar circumstances of the case, the prisoner was admonished and released without punishment.(a) N. A. R. vol. 1, page 344.

By the Mahomedan law *ibra* absolves from punishment.

SECTION XXXVI.

OF COSTS AND DAMAGES.

1534. No pecuniary compensations nor sums as damages are to be adjudged to, or be recoverable by, individuals in any criminal prosecution. *Beng. and Ben. Reg.* XIV. 1797, sect. 3, cl. 1. *Ced. Prov. Reg.* VII. 1803, sect. 39, cl. 1.

Damages cannot be adjudged:

1535. But the criminal courts are not restricted from adjudging a reimbursement of costs actually incurred, upon a prosecution before them, by either of the parties thereto, in

but costs actually incurred may be awarded;

(a) A similar case is reported, in which a wife mutilated her husband, and the latter refused to appear against her; and, when the government pleader conducted the prosecution, presented a *razeenamah*. On this case the court came to the conclusion that it was not within their competence to sentence the prisoner to punishment; and section 3, Reg. IV. 1822, was subsequently enacted in order to provide such power. See N. A. R. vol. 2, page 29.

particular instances, wherein they consider such reimbursement just and equitable. *Beng. and Ben. Reg. XIV. 1797, sect. 8. Ced. Prov. Reg. VII. 1803, sect. 39, cl. 3.*

in all cases.

1536. The above provisions apply to suits under Act IV. 1840, as well as to other cases. (a) Const No. 505.

Suits for damages must be preferred in the civil court.

1537. The criminal courts cannot award any compensation or damages beyond reimbursement of actual costs. The parties must be referred to a civil action. Const. No. 931.

But civil courts cannot award the costs of a criminal action. The magistrate may award such by a subsequent order.

1538. The civil courts are not competent to take cognizance of suits for costs incurred in a criminal court. But if a magistrate, from oversight, has omitted to order a reimbursement of costs to the party whom he thinks justly entitled thereto, he is at liberty to supply the omission by a subsequent order, upon application of the party for that purpose. Const. No. 367.

Costs may not be paid from the government treasury; but must be recovered as in a civil suit.

1539. In no case, wherein the government is not one of the parties, can reimbursement of the costs be made from the treasury of the court; they must be levied by the attachment and sale of the property of the party against whom they are awarded, in like manner as costs adjudged in civil suits. Const. Nos. 373 and 590.

Fine not exceeding in amount the property wrongfully appropriated may be imposed; and paid to the parties injured.

1540. All criminal courts within the territories under the government of the East India Company may add to the punishment competent to them to inflict upon persons convicted before them of robbery, theft, embezzlement, knowingly receiving stolen goods, cheating, or other wrongful appropriation of property, or of being accessory or privy to any such offence, the punishment of fine, not exceeding the loss appearing to be caused to the several persons who have suffered by such wrong; and may pay and distribute the proceeds of such fine, or any part thereof, to or for the benefit of the said several persons, according to the discretion of the court. Act XVI. 1850, sect. 1. See section "of restitution of stolen property" in book 6.

SECTION XXXVII.

OF THE LIABILITY OF JUDICIAL OFFICERS TO THE CIVIL COURTS.

How far liable to action in supreme court for official acts.

1541. In order to render the provincial magistrates, as well natives as British subjects, more safe in the execution of their office, it is enacted, that no action for wrong or injury shall lie in the supreme court against any person whatsoever exercising a judicial office in the country courts for any judgment, decree, or order of the said court, nor against any person for any act done by or in virtue of the order of the said court. 21 George III. cap. 70, sect. 24.

Not liable for things done within jurisdiction though erroneously or irregularly done:

1542. Three meanings may be attributed to this clause. *First.* It may mean that no action shall lie against one exercising a judicial office in the country courts for any judgment, decree, or order of the court, whether in a matter in which the court had a jurisdiction or not,

(a) This was ruled in regard to Reg. XV. 1824, ; but appears equally applicable to Act IV. 1840.

or whether the judge wilfully and knowingly gave judgment or made an order in a matter out of his jurisdiction or not; so that *the fact* of the existence of a judgment, decree, or order should preclude all inquiry. *Secondly.* It may mean to protect the judge only where he gives judgment or makes an order in the *bonâ fide* exercise of his office, and under the belief of his having jurisdiction, though he have it not. *Thirdly.* The object may have been to put the judges of the native courts on the footing of judges of the superior courts of record, or English courts having similar jurisdiction to the native courts, protecting them for things done within their jurisdiction though erroneously or irregularly done, but leaving them liable for things done wholly without jurisdiction. It seems to us that the first of these constructions is inadmissible. It never could have been intended to give such unlimited power to the judges of the native courts, and reason points out that the general words must be qualified in the manner stated in one of the two latter modes of construction. We think the third is the right mode; and that the true meaning of the section in question was to put the judges of native courts of justice on the same footing as those of English courts of similar jurisdiction. There seems no reason why they should be more or less protected than English judges of general or limited jurisdiction, under the like circumstances. To give them an exemption from liability when acting *bonâ fide* in cases in which they had, though mistakenly, acted without jurisdiction, would be to place them on a better footing than English judges or magistrates, and to leave the injured individual wholly without civil remedy; for English judges, when they act wholly without jurisdiction, whether they may suppose they had it or not, have no privilege. *Calder versus Halkett*, 2 Moore's East Indian appeal cases, page 306.

but liable under the above statute for things done wholly without jurisdiction.

It will be seen, by referring to Act XVIII. 1850 in para: 1546, that the legislature has thought fit to grant such extended protection to judicial officers in India.

1543. It is not merely in respect of acts in court, acts *sedente curiâ*, that an English judge has an immunity, but in respect of all acts of a judicial nature, as was decided in the case of *Taafe v. Lord Downes*; and an order under the seal of the foudaree court to bring a native into that court to be there dealt with on a criminal charge is an act of a judicial nature, and whether there was any irregularity or error in it or not, would not be punishable by ordinary process at law. But the protection would clearly not extend to a judicial act done wholly without jurisdiction. *Calder versus Halkett*, *Ibid.*

Protection not confined to acts done during the sitting of the court, but extended to all acts of a judicial nature provided there be jurisdiction.

1544. A judge is not liable in trespass for want of jurisdiction, unless he know of the defect, or had such information as to make it incumbent on him to ascertain the fact; and it lies on the plaintiff in every such case to prove the possession of such knowledge or information on the part of the judge. *Calder versus Halkett*, *Ibid.*

Not liable for want of jurisdiction unless he knew, or had means of knowing, of defect.

1545. In regard to the liability of individuals to the jurisdiction of the courts, it has been ruled, with reference to the doctrine laid down by Sir L. Peel, C. J. in Foy's case, that the criminal courts should not proceed to try and sentence a person, whom they may themselves have fair reason from any cause to regard as probably not subject to their jurisdiction, without making all practicable inquiry to satisfy themselves on the point.(a) This ruling rescinded that laid down in the case of *Government versus Mandeville* (N. A. R. vol. 2, page 111; and Const. No. 759) that the *onus probandi* of non-liability rested with the defendant; and that in default of such proof the courts might safely proceed against him. C. O. No. 33 of vol. 4.

When the courts are bound to enquire as to their jurisdiction.

(a) The judgment of Sir L. Peel will be found at length in the chapter "of European British subjects" in book 8.

Judicial officer not liable even for want of jurisdiction if he in good faith believed himself to have jurisdiction.

1546. No judge, magistrate, justice of the peace, collector, or other person acting judicially, is liable to be sued in any civil court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction : provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of : and no officer of any court, or other person bound to execute the lawful warrants or orders of any such judge, magistrate, justice of the peace, collector, or other person acting judicially, is liable to be sued in any civil court for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same. Act XVIII. 1850.

A "belief in good faith" defined to be a "belief" which stands on some reasonable grounds."

1547. The construction of the above Act, for the first time since its promulgation, was submitted to the opinion of the judges of the supreme court (August 1851) in the case of *Lang versus Gubbins*, which was an action brought against a mofussil magistrate for issuing an illegal warrant to seize the plaintiff's goods and chattels. In that case Sir L. Peel, C. J. in delivering the judgment of the court (after argument of the question), held that the "words 'in good faith' were merely an English version of the common Latin phrase '*bond fide*,' of such frequent use in the law, both phrases having the same meaning : and that the true construction of 'good faith' appeared to be that belief, which, though erroneous, was excusable in the particular instance, or in other words that which stood on some reasonable grounds." Taylor and Bell's Reports, vol. 1, page 228 note.

Protection extended against actions for libel.

Reports to nizamut adawlut are judicial proceedings.

1548. A judge is privileged in respect of any words, relevant to the issue, uttered by him, while acting judicially, in a case within his jurisdiction, although such words convey an imputation upon a person not judicially before him ; and the English letters reporting on trials, which a sessions judge is directed to forward to the nizamut adawlut, are judicial proceedings and entitled to the same privilege as a judgment delivered in open court. In order to maintain an action of slander against a judge for words uttered in the course of his duty, on the ground that they were irrelevant to the matter in hand, it must be shown that the irrelevancy was so gross as to afford no room for the hypothesis of honest mistake. Moulavie Ali Kureem *versus* Sandys, Boulnois's Reports, page 1.

No rule or other process to be made on information against any such officer, until proper notice has been given to him.

1549. In case of an information intended to be brought or moved for against any such officer or magistrate for any corrupt act or acts, no rule or other process shall be made or issued thereon, until notice be given to the said magistrate or officer, or left at his usual place of abode, in writing, signed by the party or his attorney, one month if the person exercising such office shall reside within fifty miles of Calcutta, two months if he shall reside beyond fifty miles, and three months if he shall reside beyond one hundred miles from Calcutta, before the suing out or serving the same, in which notice the cause of complaint shall be fully and explicitly contained ; nor shall any verdict be given against such magistrate, until it be proved on trial that such notice hath been given ; and in default of such proof a verdict with costs shall be given for the defendant. 21 George III, cap. 70, sect. 25.

No magistrate liable in such case until he has appeared.

1550. No magistrate shall be liable in any such case to any personal caption or arrest, nor shall be obliged to put in bail, until he shall have declined to appear to answer after notice given as directed by this Act, and service of the process directing his appearance by himself or his attorney. 21 Geo. III, cap. 70, sect. 26.

1551. Magistrates and other officers who were not liable to prosecution in the Company's courts for damages, for acts done in their official capacity, prior to the enactment of Act XI. 1836,(a) have not been rendered liable by that Act. Const. No. 1051.

Not liable to civil courts.

1552. No action will lie in the civil courts either against the magistrate, or against the government for acts done by the magistrate in his judicial capacity ; and those courts are prohibited from taking cognizance of suits instituted to reverse the order of a magistrate, or other criminal court, even though such order were passed without jurisdiction. Reports S. D. A. L. P. 1855, pages 265 and 461. This doctrine appears questionable, and would not probably be again upheld upon argument. The judicial character of an officer cannot protect an act done without jurisdiction, for the judicial character exists only within the limits of the jurisdiction. Moreover, sect. 3, Reg. IX. 1831 expressly recognizes the power of the civil courts to revise the orders of the criminal authorities in cases of a miscellaneous nature which are not criminal trials.

Action will not lie in civil courts against the magistrate ; or against government for acts of magistrate ; or to reverse order of magistrate.

1553. On the institution of any action against an officer of government for acts done in the discharge of his public duty, he is to communicate the fact through the usual official channel, reporting all circumstances which may be necessary to enable the government to arrive at a decision on the real merits of the case. If, on full examination into the case, and on a fair and reasonable interpretation of his proceedings, the officer appears to have acted rightly, he will be directed to take the necessary steps to defend himself, government advancing the funds necessary for that purpose, to be refunded after the issue of the action is known in case the circumstances then brought to light should prove the officer to have acted improperly. If, on the other hand, upon examination of his case by the government, his conduct appears to have been clearly wrong, he will be informed that the government will not interfere, and that he must defend himself at his own charge. C. O. S. D. A. No. 11, May 12, 1848. L. P. C. O. Sup. Pol. L. P. No. 5 of 1848.

How far government will advance the expenses of actions brought against officers for acts done in the discharge of public duties.

CHAPTER IV.

OF PROCESSES.

SECTION 1.

RULES OF GENERAL APPLICATION.

1554. Forms of every requisite process are prescribed by C. O. No. 3, January 19, 1855. Indents for such forms are to be made on the lithographic press.

Forms.

• 1555. Civil and criminal processes may be forwarded by post on the public service. C. O. November 30, 1855. L. P.

May be sent by dāk.

1556. Whenever a summons, or other criminal process, is served by a burkundaz, chaprasi, or other public officer receiving wages from government (and such officers are

In heinous cases all processes are to be served by offi-

(a) This Act made Europeans liable to the mofussil civil courts.

cers receiving pay from government.

Penalty, if such officers demand or receive diet money.

to be employed in serving all criminal processes in cases of a heinous nature) no diet money, or other allowance or gratuity, is to be demanded or received from the complainant or the accused, whether the case be adjusted by *razeenamah* or otherwise; and the demand or receipt of such by any public officer, directly or indirectly, in violation of this rule, is punishable as a criminal offence on conviction before the magistrate, or sessions court. The offender is also compellable, either by a criminal prosecution, or a civil action, to refund the amount received, besides being liable to immediate dismissal from office. Reg. IX. 1807, sect. 14, cl. 2. Reg. VII. 1811, sect. 4.

In petty cases processes are to be served by peons, who are to receive only a fixed rate of tulubana under the same penalties.

1557. In cases of adultery, fornication, calumny, abusive language, slight trespass, or inconsiderable assault, the process is to be served by peons, or other persons not receiving wages from government, who are to be authorized by the magistrate to demand and receive tulubana at a fixed rate; and they are not to demand or receive more, upon any pretence whatever, under the penalties above stated with respect to public officers receiving wages from government. The tulubana is to be paid in the first instance by the party at whose instance the process is issued, subject to reimbursement from the accused, if the charge is established, under the discretion vested in the criminal courts by sect. 8, Reg. XIV. 1797 (*Ced. Prov.* cl. 3, sect. 39, Reg. VII. 1803).^{*} Reg. IX. 1807, sect. 14, cl. 3. Reg. VII. 1811, sect. 4.

^{*} *v. para* 1535.

Peons so employed are to be registered

1558. Magistrates are to cause the names of all persons employed in the execution of criminal processes, who do not receive a monthly salary from government, to be registered with the following particulars, *viz.*, the names of their fathers, their age, and places of abode, and a concise description of their persons. Reg. XXVI. 1814, sect. 14, cl. 2.

Nazirs are to employ no persons not registered.

1559. The nazirs are strictly prohibited, under pain of immediate dismissal, from employing any person not registered in the mode above prescribed, and not being an officer on the public establishment, in the service of any process, or in the execution of any order or official act whatever, without a special authority from the magistrate, or other public officer competent to give such directions. Reg. XXVI. 1814, sect. 14, cl. 3.

Badge of office.

1560. It was directed that the peons, who might be registered as above required, should be furnished with an uniform belt, or such other badge of office, at the discretion of the judge, as should suffice to distinguish them for the chaprasis on the fixed establishments. The expense of such badge was to be defrayed out of the tulubana of the peon receiving the same. The judges and magistrates were required to frame a table for regulating the account of tulubana demandable on the service of process, according to the rates prescribed by the regulations, or established by usage.^(a) The table was to contain a statement of the several police jurisdictions, or other more convenient local divisions, the computed distance of the central part of such local division from the sudder station, and the number of days for which tulubana is to be allowed on the serving of

Table of tulubana according to the distance of each thana.

(a) In clause 3, sect. 14, Reg. IX. 1807 (which is modified by sect. 14, Reg. XXVI. 1814) the rate specified is "two annas per diem, or three annas in districts where such higher rate is usual and necessary." The Lieut. Governor of Bengal has directed that an uniform rate of 2 annas per diem should be adopted in all the civil courts of the lower provinces. C. O. S. D. A. No. 62, April 9, 1855. L. P.

process within each local division, calculated on the computed distance of the centre of each local division from the sudder station. Reg. XXVI. 1814, sect. 14, cl. 4.

1561. The table so framed is to be suspended for general information in the cutcherry of the magistrate; and no tulubana is to be allowed in any instance beyond the rates, or for a greater number of days, than is prescribed in such table, without a special written order from the magistrate, assistant, or other public officer competent to pass the same. Reg. XXVI. 1814, sect. 14, cl. 5.

Such table to be suspended in the cutcherry, and all tulubana to be calculated accordingly.

1562. The amount of tulubana, demandable according to such table, is to be specified on the back of each summons or other process, and the amount is to be paid by the person taking out the process to the nazir previously to the execution of such process: a receipt is to be endorsed on the process in each instance by the nazir, specifying the amount, and the person from whom it was received. Reg. XXVI. 1814, sect. 14, cl. 6.

Tulubana to be paid previously to the execution of process.

1563. When two or more processes are to be served by one peon, the magistrate, or other officer who orders the same to be served, is to determine in what proportions the fixed rates of tulubana are to be paid by the parties respectively, and is to sign an order to that effect on the face or back of the process. Reg. XXVI. 1814, sect. 14, cl. 7.

If two or more processes are to be served by one peon.

1564. When the process has been executed and returned according to the preceding rules, the nazir is to pay to the peon three-fourths of the tulubana received by him on account of such process, and the nazir is entitled to appropriate the remaining one-fourth of the tulubana to his own use. Reg. XXVI. 1814, sect. 14, cl. 8.

The peon is to be paid $\frac{3}{4}$ of the tulubana after execution of process.

1565. The nazir is permitted to exercise his discretion in advancing to the peon, on his own responsibility, such portion of the tulubana as he considers necessary for the subsistence of the latter while engaged in serving the process on account of which it is paid; but the presiding officer is not competent to exercise any interference in the matter. Const. No. 1084.

But nazir may make advances to the peon at his discretion.

1566. The magistrates and other officers are required to take every possible precaution, and to give all practicable attention for the purpose of preventing illegal or undue exactions of diet or subsistence money under the name or pretence of tulubana. Reg. XXVI. 1814, sect. 14, cl. 9.

Magistrate to prevent undue exactions.

1567. The issue of a general warrant [or other process against the person] is illegal. Const. No. 766.

General warrant illegal.

1568. Zumeendars, like any other individuals, are competent to apprehend persons in the actual commission of public crimes. C. O. No. 80 of vol. 1.

Any one may arrest offender in the act.

1569. The sudder court expressed their reprehension of permitting candidates for employment to apprehend, without warrant or authority, parties who have evaded apprehension by the police, in the hope that by so doing they may obtain employment. Reports L. P. 1851, page 1657.

Candidates for employment should not be allowed to arrest persons who have absconded.

1570. Whenever any process is issued by a magistrate or police officer for the attendance of a prosecutor or witness, or for the apprehension of a defendant, and such person is absent or has absconded, the police officer entrusted with the process is to require the proprietor, manager, or head person of the village, in which the person summoned is said to

In case of absence, or absconding, an engagement is to be taken from head person of village to pro-

duce him on his return, or to give information.

reside, to furnish a written certificate of the individual's absence, engaging therein either to cause his attendance on his return to the village or to give information at the thana of his arrival. Reg. XX. 1817, sect. 24, cl. 5.

Penalty for failure in such engagement.

1571. If it is afterwards established, on inquiry before the magistrate, that the person summoned was actually in the village at the time of the execution of such certificate; or if it is proved that he returned to the village afterwards, and that the person executing the certificate wilfully neglected to give due intimation of his return to the officers of police; the person so offending is liable to be fined by the magistrate in any sum not exceeding 200 rupees, and in default of payment to be confined in the civil jail for any period not exceeding one month. Reg. XX. 1817, sect. 24, cl. 6.

Magistrates may attend in person the execution of their own process.

1572. Whenever a magistrate, or other public officer, authorized by the regulations in force to issue process of arrest, or other judicial process upon the person or property of individuals amenable to their respective jurisdictions, deems it necessary for any special reason to be personally present at the execution of such process; and to see that it is duly executed in the manner prescribed by the regulations; it is competent to the public officer, who has issued the process, to attend personally for the purpose above-mentioned; and to adopt or direct any legal measures that may be necessary for the execution thereof. Reg. I. 1825, sect. 2.

Power of releasing from arrest.

1573. The court which issued the process of arrest is alone competent to release the prisoner. Const. No. 1000.

A person in attendance on one court is not liable to be arrested by another.

1574. A person being in attendance on a criminal court on bail to answer a criminal charge is not liable to arrest under a civil process; nor is a person in attendance on a collector to defend a suit or claim pending before that officer. But the protection will last only as long as the party is in actual attendance, or coming to, or returning from the court.(a) Const. Nos. 885, 893, and 1089.

Nor can a civil court require a magistrate to deliver up a person on the expiration of his sentence of imprisonment.

1575. The civil court is not competent to require from a magistrate delivery on civil process of the person of a prisoner after the expiration of his imprisonment in the criminal jail. Const. No. 1276.

Nor can a police officer be arrested while in the execution of his duty.

1576. Police officers of one zillah may not be arrested in another, while in the execution of their duty. Const. No. 851.

(a) On a reference being made to the Advocate General regarding this point, he replied, that according to English law no man attending a court of justice as party or witness in any cause of any sort could be arrested on process in a civil suit, the protection being *eundo*, *morando*, and *redeundo*, and a reasonable construction being given as to what is going, staying, and returning. It would seem therefore that a plaintiff is equally with the defendant exempt from an arrest under such circumstances; and it is doubtless as reasonable in the one case as the other.

SECTION II.

OF SUMMONS.

1577. The summons issued by a magistrate* in the case of any bailable crime or misdemeanor, which does not appear to require the immediate apprehension of the accused, is to bear his official seal and signature and to be served through the foudaree nazir by a single chaprasi or peon;—or† if the accused have an accredited agent at the place where the court is held, expressly empowered either by a clause in his general mokhtarnamah, or by a separate mokhtarnamah granted for that purpose, to receive on behalf of his constituent judicial processes, the summons may be tendered, if the magistrate deem it expedient, to such agent to be communicated by him to his principal; and the agent's acknowledgment endorsed thereon is to be accepted as a sufficient service of it, if he be desirous of giving such acknowledgment in preference to the summons being served on the person of his principal by an officer of the court;—or if the accused is employed in the salt department, according to the special rules provided for such case. Reg. IX. 1807, sect. 6, cl. 1.

1578. The summons in all such instances is to specify the offence with which the accused is charged, and is to contain, according to the circumstances of the case, a requisition to attend either in person or by vakeel to answer the charge on or before a certain day to be stated in the summons according to the form No. 1 of Appendix A. Reg. IX. 1807, sect. 6, cl. 2.

1579. If it is deemed necessary to require bail, the extent of the bail is to be specified in the summons according to form No. 2 of Appendix A. Reg. IX. 1807, sect. 6, cl. 3.

1580. The warrant issued by the magistrate, when an accused person, on whom a summons has been served, has not attended according to the exigence thereof,* is to bear his official seal and signature [and to be drawn out according to form No. 5 of Appendix A]. Reg. IX. 1807, sect. 7.

1581. In the Company's territories, except the local jurisdiction of the supreme court, whenever in any criminal case a summons to the defendant is by law the first process, it is lawful for any court which has issued a summons in such case to issue a warrant for the apprehension of the defendant in such case, upon proof that due diligence has been used to serve such summons upon the defendant, and that the officer or other person whose duty it is to serve such summons upon the defendant has been unable to serve such summons; any law or regulation to the contrary notwithstanding.† Act X. 1845.

1582. In cases, in which bail is not required, the officer entrusted with the summons is to demand only an acknowledgment of the receipt of it; and in the absence of the party the summons may be served on the principal person in his house or family, if such person be willing to receive the same, and to return an acknowledgment for the party. The officer serving the summons, in such instances, as well as in all cases wherein the magistrate may deem it proper to admit the private adjustment of the parties, is to be further instructed

By magistrate.

How to be served in bailable offence.

* v. ¶ 346

† In the manner prescribed for service of civil process by cl. 2, sect. 2, Reg. II. 1806.

What it is to contain; and form.

Form to be used when bail is required.

Warrant when the summons is neglected.

* v. ¶ 347.

Warrant may be issued upon failure to serve summons.

† For form see appendix A, No. 1.

How the officer serving the summons is to proceed in cases, in which bail is not required.

He may receive razeenamah as a sufficient return.

on the tender of a razeenamah, expressing the plaintiff's desire to withdraw his complaint, and the defendant's acquiescence in the complaint being withdrawn, to receive such razeenamah as a sufficient return to the process. Reg. IX. 1807, sect. 8.

By police officer.

To be served by a single burkundaz, and not by the party complaining.

* v. ¶ 862.

1583. The summons issued by a police officer in the case of a bailable offence, not requiring the immediate apprehension of the accused,* is to bear his official seal and signature, and to be served through a single burkundaz, or through any known and accredited agent of the party complained against, who may be upon the spot, and willing to receive the same in behalf of his principal; but no summons is to be delivered to a complainant to serve on the person accused. Reg. XX. 1817, sect. 24, cl. 1.

When bail is not required, acknowledgment of receipt of process is sufficient.

1584. In cases wherein bail is not required, police officers entrusted with the service of summonses are to demand only an acknowledgment of the receipt of the process; and, in the absence of the party, the summons may be served on the principal person in his house or family, if such person be willing to receive the same, and to return an acknowledgment for the party whose attendance is required. Reg. XX. 1817, sect. 24, cl. 2.

Forms of summons when bail is not, and when it is required.

1585. The summons to be issued by police officers, under the rules contained in the preceding clauses, is to be made out in the form No. 32 of Appendix A; but if the charge is of a serious nature, and such as appears to require bail to secure the appearance of the party accused, either in person or by vakeel, before the magistrate, the summons is to be drawn up according to the form No. 33 of Appendix A, and is to specify the bail to be given. Reg. XX. 1817, sect. 24, cl. 3.

Form of warrant in cases of persons neglecting summons.

* v. ¶ 864.

1586. The warrant issued by a police officer for the apprehension of an accused person, who does not obey the requisitions of the summons,* is to be under his official seal and signature, and to be drawn out according to the form No. 34 of Appendix A. Reg. XX. 1817, sect. 24, cl. 4.

SECTION III.

OF WARRANTS.

By magistrate.

In a case not bailable.

* v. ¶ 834.

1587. The warrant to be issued by a magistrate, in the case of an offence not bailable or in which the admission of bail would be unsafe and improper,* is to bear his official seal and signature, and to specify the crime charged, and to direct the officer entrusted with the execution of it to apprehend the person accused. It is to be in the form No. 6 of Appendix A, and to be directed to the nazir of the criminal court. Reg. IX. 1807, sect. 3, cls. 1 and 2.

In a bailable case.

1588. If the magistrate in any bailable case deems it proper to authorize the officer, to whom the warrant is committed, to receive bail for appearance (with or without security for keeping the peace), it is to be so specified in the warrant, with the extent of the bail (and security) required, in the form No. 2 of Appendix A. Reg. IX. 1807, sect. 3, cl. 3.

1589. The bail to be taken for appearance before the magistrate is to be in the form No. 3 of Appendix A; and when security is required for keeping the peace, it is to be taken in the form No. 20 of Appendix A. Reg. IX. 1807, sect. 3, cla. 4 and 5.

Bail-bond, and security for keeping the peace.

1590. The magisterial authorities are required to conform strictly to the above rules, and to be careful that no warrants are issued for the apprehension of persons not expressly named therein. The sessions courts are to notice any instances in which this rule is inadvertently violated. C. O. No. 141 of vol. 3. L. P.

The above rules to be strictly conforming to; and general warrants prohibited.

1591. The warrant issued by a darogah or other police officer, in cases requiring the immediate apprehension of the offender,* is to bear his seal and signature, and to be drawn out in form No. 34 of appendix A. Reg. XX. 1817, sect. 25, cl. 1.

By police officer.

In serious cases warrant how to be issued,

* c. ¶ 865.

and how to be served.

1592. Warrants issued by the police darogah are to be served by the jemadar and burkundazes of the thana; and the mode of execution is to be certified on the back of the process, which is to be filed and sent in to the magistrate together with the report and chalan which accompanies the prisoners. Reg. XX. 1817, sect. 25, cl. 2.

1593. In issuing processes of arrest in cases in which the darogah apprehends resistance, or on any occasions where the assistance of the landholders, or farmers, or local agents, is necessary for the due execution of the process, he is specifically to require in writing, on the face of the dustuck, or warrant, the proper landholder, or farmer, or local agent, to back the process and to afford the necessary aid. Reg. XX. 1817, sect. 25, cl. 3.

Darogah to require the assistance of landholders, when necessary.

1594. Darogahs, mohurirs, or jemadars of police, are competent to apprehend, without a written charge or warrant, persons who are found in the act of committing a breach of the peace, or against whom a general hue and cry is raised immediately after the commission of the criminal offence, or who are detected with stolen goods in their possession; but on such occasions it is incumbent on the officer, by whom the arrest is made, to record his reasons for seizing the offending party, and to forward such person forthwith together with a report of the circumstances of the case to the magistrate. Reg. XX. 1817, sect. 25, cl. 4.

Offenders, taken in the act, to be apprehended without written warrant.

1595. Officers of police are not without necessity to break open the door of a dwelling house, or any place of habitation, for the purpose of executing a warrant or other process of arrest. But if certain information is received that a person, charged with murder, robbery, or other heinous offence, or violent breach of the peace, and against whom a warrant or other process of arrest has in consequence been issued, is concealed within a house or other building, and such person does not deliver himself up on the requisition of the officer bearing a written warrant and the written process to apprehend him; the latter may, in the presence of two or more creditable inhabitants of the place, break open the outer door of the house or other building, and also the door of any interior apartment, not being a zenanah or female apartment in the actual occupancy of women by the usage of the country considered private, for the purpose of executing the warrant, or other process of arrest, entrusted to him. Reg. XX. 1817, sect. 25, cl. 5.

Dwelling houses are not to be forcibly entered, except in cases of necessity.

1596. In such cases, if information is received that the accused has concealed himself in a zenanah or female apartment in the actual occupancy of women, the officer, employed

Zenanahs are not to be entered except upon credible

information that offenders are there concealed; and the women are to be previously allowed to withdraw.

to execute the warrant, is to surround the house or take such other precautions as are requisite to prevent his escape; and is to endeavour to ascertain by the means of two creditable women, unconnected with the family or with each other, whether the accused is really concealed in the zenanah; in which case and if such person does not on a further requisition deliver himself up, the police officer is competent, in the presence of two or more creditable residents on the spot, to break open the female apartment, and execute the process entrusted to him, giving notice at the same time to any women in the zenanah that they may withdraw. Reg. XX. 1817, sect. 25, cl. 6.

The same powers are vested in officers entrusted with the execution of process of arrest by a magistrate.

1597. The powers vested in officers of police by the above provisions, or by any other regulation in force, for the service and execution of warrants, or other process of arrest, in serious criminal cases, under the seal and signature of a police officer, are equally applicable to all officers entrusted with the execution of a warrant, or other process of arrest, in criminal cases, bearing the seal and signature of a magistrate, joint-magistrate, or any public officer empowered to act as magistrate, whether the person to whom it is addressed be an officer of the police, or otherwise. Reg. I. 1825, sect. 3, cl. 1.

Police officers subject to punishment for abuse of power.

1598. Any wilful abuse and perversion of the powers hereby vested in police officers for the ends of public justice, will subject them, on conviction before the magistrate or sessions court, to exemplary punishment according to the circumstances of the case, besides immediate dismission from office. Reg. XX. 1817, sect. 25, cl. 7.

Persons entrusted with the execution of a process of arrest by a magistrate are liable to the same punishment for abuse of power.

1599. The above provision is applicable to all persons, whether police officers or others, who are employed to execute a warrant, or other process of arrest, issued by a magistrate, joint-magistrate, or other public officer empowered to act as magistrate; and who is guilty of any wilful abuse or perversion of the powers vested in them by this regulation. Reg. I. 1825, sect. 3, cl. 2.

Magistrate to be careful that the police officers do not make unnecessary arrests.

1600. The magistrates must require from police officers the greatest caution in the exercise of their authority to apprehend persons on suspicion of crime. His attention should be especially turned to this point, when the disproportion of convictions to acquittals is great; and he should point out to the police officers all instances where they should not have sent the suspected persons to the sudder station, but should have admitted them to bail (if necessary), and have awaited his instructions. C. O. No. 17 of vol. 2.

SECTION IV.

EXECUTION OF PROCESS IN THE SALT AND OPIUM DEPARTMENTS.

Police.

Process how to be served on persons so employed in bailable cases, and security how to be given.

1601. In all bailable cases, where it is necessary, under the provisions of this regulation, to summon or apprehend any officer or person employed in the salt or opium departments, the police darogah is to transmit the summons or warrant, under a sealed cover, addressed to the salt or opium agent, or the head native officer of the aurung, kothee, or chokee, who is either to give, or to direct sufficient security to be given, for the due

attendance of the party, certifying on the back of the process the manner in which it has been served, and by whom the security has been given, or causing the defendant to accompany the officer bearing the darogah's process to the thana. Reg. XX. 1817, sect. 29, cl. 1.

1602. In cases of a bailable nature, in which a person under engagements, and employed in the salt or opium departments, is summoned under the above provisions during the manufacturing season, the police darogah, with the view of preventing unnecessary interruption to the manufacturer, is to require the party summoned to appear in person or by vakeel, either during or after the manufacturing season, as the circumstances of the case may dictate, subject to the future orders of the magistrate, to whom the darogah is in each instance to report the reasons which have influenced him in the exercise of the discretion here vested in him. Reg. XX. 1817, sect. 29, cl. 2.

In such cases the accused is not to be forced to appear till after the manufacturing season, except in particular cases.

1603. Summonses to any officers or persons, employed in the salt or opium departments, to attend as witnesses are to be served in the manner directed by the above provisions; but the salt or opium agent, or the head native officer of the aurung, kothee, or chokee, instead of requiring the person summoned to give security, or proceed to the thana, is to take from the witness a recognizance, agreeable to the form No. 39 of appendix A, and is to deliver the same to the officer serving the process. Reg. XX. 1817, sect. 29, cl. 3.

Rule for serving summonses on such persons to attend as witnesses, and for taking recognizance.

1604. If a charge is preferred to a police darogah against any officer or person, employed in the salt or opium departments, for an offence that is not bailable, and there appears to him sufficient ground under the provisions of this regulation, for apprehending the person so charged, the warrant for his apprehension is to require him to attend immediately in person, and is to be executed in the same manner as upon persons not so employed. But the darogah, after securing the offender, is to give notice of his apprehension to the salt or opium agent, or to the head officer of the nearest aurung, kothee, or chokee, as the case may be. Reg. XX. 1817, sect. 29, cl. 4.

Warrants for offences not bailable are to be served upon such persons as upon others; but notice is to be given to the agent.

1605. When any process or order is issued by a magistrate to a salt agent, or his assistant, he is to forward it under a sealed cover addressed to the agent, or his assistant, and superscribed with his official attestation. The agent, or his assistant, is immediately to acknowledge the receipt of the order, or process, by an endorsement to that effect on the back of it, and is to return it under a sealed cover addressed to the magistrate. Reg. X. 1819, sect. 15.

Magistrate.

Process how to be issued to a salt agent or his assistant.

1606. In cases in which a person under engagements on account of the salt manufacture, and employed therein, is charged before the magistrate with a bailable offence, and the warrant is ordered to be served at any period between the commencement of the month of Kartik and the end of Asarh;—the warrant is to be enclosed in a sealed cover addressed to the agent, and superscribed with the official signature of the magistrate; and is to require the party summoned to appear in person, or by vakeel, as the magistrate thinks proper, either during or after the manufacturing season; and to specify the sum for which the security or recognizance for the appearance of the defend-

Rules for serving process against persons concerned in the provision of salt under a salt agent when charged with a bailable offence.

The warrant how to be sent and what to contain.

ant is to be given, the amount of which is to be regulated by the magistrate, according to the nature of the offence, and the situation and circumstances in life of the defendant.

The agent may himself or by another person execute the security required ;

his guarantee of the security being sufficient ;

or he may cause the accused to be conveyed to the court.

He is to appoint persons at the sub-station to execute securities ; and the magistrate may send the process to such persons.

If the process is served in the ordinary form on persons employed in the salt manufacture, from ignorance on the part of the court of his being so employed,—the officer how to proceed.

Agent to endorse the process.

Manner of arresting such persons on criminal charges not bailable.

It is at the option of the agent to execute, or to cause one of his officers, or any other person whom he thinks proper, to execute the security required from the accused, in cases in which such security is considered necessary, or to leave the party summoned to find the required security ; and in the latter case if the officer bearing the summons or warrant entertains doubts of the responsibility of the surety so offered, and the agent declares such surety to be responsible, the officer is to accept the security. If the agent does not deem it expedient to order any of his officers or any other person to become security, and the defendant himself is not able to find such security as the agent deems responsible, the agent is to cause the party summoned to accompany the officer to the court, or, if the summons has not been committed to the charge of an officer, he is to cause him to be conveyed before the court. The agents are to appoint such persons as they think proper to station at the place, at which the court is held, to execute such security ; and the magistrate is authorized in instances in which he deems it proper, either from the distance of the place of abode of the agent from the place at which the person to be summoned resides, or other circumstances, to order the summons or warrant to be enclosed to one of the persons so empowered to become security, instead of transmitting it to the agent himself,—in which case such person is to proceed in the manner prescribed to the agent where the summons is sent immediately to him. If the prosecutor does not specify that the person complained against is employed in the salt department, and the summons or warrant in consequence is ordered to be served on him in the same manner as on other persons during the months of Kartik and Asarh, the officer serving the summons or warrant, on the circumstance of the defendant being so employed being notified to him by the agent or any of his officers, or by the defendant himself, is to deliver it to the nearest person empowered to execute securities, who is to proceed as above : but if the circumstance is notified to him by the defendant only, and he entertains doubts of his being so employed ; or if without such doubts he apprehends that the defendant will abscond while he is repairing with the process to the person empowered to execute the securities ; he is in such case to carry the defendant with the process to the person so empowered, and is not to release his person until the required security has been executed. Reg. X. 1819, sect. 21, cl. 4.

1607. The agent or other officer, through whom the summons or warrant is served, is to note on the back of it in what manner it has been served, and by whom the security has been executed. Reg. X. 1819, sect. 21, cl. 5.

1608. If a charge is preferred to a magistrate against any of the officers of the agents, or any person under engagements on account of the salt manufacture and employed therein, for an offence that is not bailable, and there appears to the magistrate sufficient ground for apprehending the person so charged, the warrant for his apprehension is to require him to appear immediately in person, and is to be executed at all times in the same manner as upon persons not so engaged or employed. But the officer, after securing the offender, is to give notice thereof to the agent, or head officer of the nearest aurung, or place of manufacture. Reg. X. 1819, sect. 21, cl. 6.

1609. In all cases in which the agents, or their head officers empowered for that purpose, become surety under any of the above rules for the appearance of any officer or person employed in the salt manufacture, or declare any party whom the person summoned offers as surety to be responsible, the agent is to be considered personally answerable for the due performance of the conditions of the security, in the event of the party for whom the security has been given not performing them himself; or, where the party himself has given the security, and it has been declared responsible by the agent or his officers, in the event of the party, or such surety, not performing them. Reg. X. 1819, sect. 21, cl. 7.

The agent to be held personally responsible for the performance of the condition of security for appearance, which is given by himself or officers.

1610. Notices to officers or other persons employed in the salt manufacture to appear as witnesses are to be served during the manufacturing season in the same manner as if they were parties in the cause; but such officers or persons are not to be summoned except when their attendance is necessary; and on their appearance they are to be examined and dismissed with all practicable despatch, so that they may be absent from the business of the manufacture as short a time as possible. Reg. X. 1819, sect. 21, cl. 8.

Notices to such persons to appear as witnesses.

1611. The agents, their assistants, uncovenanted European and native officers, are liable to be sued in the dewanny adawlut, should they apply any of the above rules regarding notices, summonses, and warrants, issued against persons employed in the manufacture of salt, to persons not bonâ fide so employed; and as those rules are intended only to prevent unnecessary interruptions to the manufacture, where it can be avoided without impeding the course of justice, magistrates are empowered in particular cases, in which it appears to them indispensably necessary for the purposes of justice, to order the personal attendance of any native officer or person in anywise concerned or employed in the salt manufacture, whether he be a party or witness in the prosecution, at any time during the manufacturing season, notwithstanding anything to the contrary in the above rules, and to cause process to be executed upon him for that purpose, in the same manner as upon other individuals; but in such cases the magistrates are to record on their proceedings their reasons for deviating from the above provisions, which are to be considered as the general rules for issuing and executing such notices, summonses, and warrants; and in the notice, summons, or warrant, they are to specify that it has been specially ordered to be so executed in virtue of the discretionary power vested in them by this clause; and they are, moreover, strictly enjoined to refrain from every unnecessary exercise of that power. Reg. X. 1819, sect. 21, cl. 9.

Salt agent and officers may be sued for improper application of the above rules.

The observance of these rules may be dispensed with on special occasions :

but reasons for the deviation to be recorded.

1612. The provisions contained in section 10, Reg. XXXI. 1793, [which regard persons employed in the provision of the Company's investment, and which are the same as those above quoted in regard to persons employed in the provision of salt] are extended to the undermentioned officers employed under the agents for the provision of opium :

The above provisions are applicable to certain officers employed in the provision of opium.

The Dewan,
Naib Dewan,
Cash-keepers,
Mohurirs,

Nagree Writers,
Godown keepers,
Gomashtahs of Kotees,
Cash-keepers ditto,

Mohurirs ditto,
Parkhias,
Dandidars.

Magistrate to be kept informed of the names and stations of such officers.

1613. A copy of the register of the names and stations of the officers enumerated above in the native languages is to be transmitted, once in every year, to the magistrate; it is also the duty of the agent to keep the magistrate informed of any intermediate change. Reg. XIII. 1816, sect. 27.

Superintendents of chokees to keep the magistrates informed of the situation of the chokees and of the officers attached to them.

1614. Superintending officers of the salt chokees are to be careful to keep the magistrates, in whose jurisdictions the chokees are stationed, furnished with lists of the chokees, pointing out their situations and specifying the names of the officers attached to them; and in the event of any change taking place in the situation of a chokee, or among the officers belonging to it, the same is to be immediately notified. Reg. X. 1819, sect. 23.

Process how to be served on officers of chokees charged with bailable offences.

1615. In cases in which an officer of a salt chokee is charged before a magistrate with a bailable offence, the warrant is to be enclosed in a sealed cover to the superintendent of the chokee, to which the party is attached, who is to cause the officer summoned to give the requisite bail, or immediately to appear in person, or by vakeel, as the magistrate thinks proper to require in the warrant. Reg. X. 1819, sect. 25.

When charged with offences not bailable.

1616. If a charge is preferred to a magistrate on oath against any of the officers of the chokees for an offence that is not bailable under the regulations, and there appears to the magistrate sufficient ground for apprehending the persons so charged, the warrant for their apprehension is to be executed at all times in the same manner as upon persons not chokee officers. But the officer of the court, after securing the offender, is to give notice thereof to the superintendent of the chokee to which the offender is attached. Reg. X. 1819, sect. 26.

When summoned as witnesses.

1617. A requisition to an officer of a salt chokee to appear as a witness is to be enclosed in a sealed cover to the superintendent of the chokee, to which such officer is attached, who is to cause the notice to be served in the regular manner; but such officers are not to be summoned excepting when their attendance is necessary, and on their appearance they are to be examined and dismissed with all practicable despatch, so that they may be absent from their chokees as short a time as possible. Reg. X. 1819, sect. 27.

Discretion vested in the courts to deviate from these rules.

1618. The discretionary power, granted by cl. 9, sect. 21 of this regulation (see para: 1611) to magistrates in special cases of persons concerned in the provision of salt under a salt agent, is equally vested in those authorities in regard to persons employed in the chokee department. Reg. X. 1819, sect. 28.

SECTION V.

OF BAIL.

Police.

In what cases bail is not to be taken.

In all other cases it may not be refused.

1619. Persons charged with murder, robbery, house-breaking, theft, arson, counterfeiting the coin, maiming or serious wounding, where the life of the person wounded is in danger, are not to be admitted to bail, if reasonable grounds appear for believing that such persons have been guilty of the crime imputed to them; but in all other cases, if sufficient bail is tendered for appearance before the magistrate, the police officer is to accept such bail, and immediately to release the party apprehended. Reg. XX. 1817, sect. 25, cl. 8.

1620. The amount of bail to be required by police officers is in no case to exceed what may be sufficient to prevent the parties absconding before the case comes before the magistrate, who is then to issue such further process or order as he judges proper. Reg. XX. 1817, sect. 24, cl. 3. Bail is in no case to be excessive.

1621. The bail to be taken by police officers for appearance before the magistrate is to be in the form No. 35 of appendix A. Reg. XX. 1817, sect. 25, cl. 9. Form of bail bond.

1622. Section 24, Reg. XX. 1817, expressly authorizes the police officers, on receiving a complaint for any bailable offence declared to be cognizable by the native officers of police to “issue a summons,” upon the party or parties accused; but in practice, it is believed that this power has seldom or never been exercised. The Court calls attention to this rule, and observes that in no part of Reg. XX. 1817 is it provided that parties thus summoned shall not be discharged without giving bail for their appearance before the magistrate. On the contrary, the parenthetical condition, which appears in clause 4 of the section referred to, leaves it to be inferred that police officers may exercise their discretion in taking bail from parties summoned to the thana on complaint for a bailable offence being preferred against them; and other parts of the same section show that this privilege of summoning parties charged with bailable offences does not take away from the police officers the power of arresting the same parties, either in the first instance if circumstances should “require the immediate apprehension of the accused,” or subsequently if the accused party should not answer to the summons. But in that case, as well as in all cases provided for in cls. 2 and 11, sect. 20; cl. 3, sect. 23; and cl. 8, sect. 25; Reg. XX. 1817, the general rule (to which all the others referred to are subordinate), contained in cl. 17, sect. 19 of the same Regulation, will come into operation, *viz*: that “no person who may once be apprehended” (not summoned) shall be discharged except on bail or under the special orders of the magistrate. Magistrates are bound to take care that their police officers understand and abide by the law enacted for their guidance. C. O. No. 21 of vol. 4. *IP. P.* Rules for conduct of police officers in requiring bail from parties summoned as distinguished from those arrested.

1623. In all complaints preferred for offences clearly bailable, and in which there is no ground for refusing bail, if offered, the magistrate is to lose no time in apprising the accused that security will be received for his appearance, stating at the same time the amount required; and he is further to record the offer and the terms of it, taking care that the amount demanded is not excessive, or in any way disproportionate to the nature of the offence, or the circumstances in life of the accused. C. O. No. 272 of vol. 1. **Magistrate.**
Magistrate is not to omit to offer release on bail in bailable cases, and to record the offer; and the amount is not to be excessive.

1624. The magistrates should limit their requisitions of security for appearance to such sums as it may appear equitable to recover if the conditions of the engagement are not performed; and they should be careful to ascertain, that the sureties accepted are sufficiently responsible to make good the amount eventually demandable from them. C. O. No. 70 of vol. 1. The amount should be limited to such sum as it would be equitable to recover; and care to be taken that the sureties are good.

1625. Persons required to find bail are not to be kept in the nazir's house until security be furnished. C. O. No. 47 of vol 2. Persons not to be confined in nazir's house.

Crimes which are not bailable.

1626. Persons accused of murder, robbery, housebreaking, theft, or counterfeiting the coin, provided there appear sufficient grounds for committing them for trial, (a) are not to be admitted to bail. *Beng. Reg. IX. 1793, sect. 7. Ced. Prov. Reg. VI. 1803, sect. 7.*

Case of arson.

1627. In Benares and the ceded provinces the offence of setting fire to any house, village, or town, is also declared not bailable; but there is no express enactment to that effect in regard to the lower provinces. It would, however, seem to be implied in sect. 3, Reg. IX. 1807.* *Ced. Prov. Reg. VI. 1803, sect. 7. Reg. III. 1804, sect. 7. Ben. Reg. XVI. 1795, sect. 4, cl. 2.*

* v. ¶ 884.

Examples.

1628. The offence of "knowingly receiving stolen property" is a bailable offence, provided the original theft of such property does not form part of the charge. So also is the offence of embezzlement. Consequently a person apprehended on such charges, should be allowed the option of giving bail. *Const. Nos. 1237 and 1238.*

Explanation of the above rules as regards homicide.

If the charge is for culpable homicide not amounting to murder, the accused is to be admitted to bail.

* v. ¶ 370.

1629. No species of homicide, except murder, is included in the provisions, which forbid the admission to bail of persons accused of murder. If the charge is for manslaughter, or any species of illegal homicide, not involving the crime of murder, the magistrate is authorized to proceed in the first instance, either by warrant for taking into custody, or by summons requiring bail, as he judges proper, on consideration of the circumstances of the case, and of the condition and character of the party accused. After the enquiry directed by sect. 5, Reg. IX. 1793 (*Ced. Prov. sect. 5, Reg. VI. 1803*)*, if the magistrate is of opinion that the evidence does not establish the crime of murder, but that there is sufficient ground for bringing the accused to trial before the sessions on a charge of manslaughter, or other culpable homicide, the party is to be held to bail for appearance before the sessions court; but the magistrate is authorized to release the accused, if the homicide, in which he appears to have been concerned, is clearly shown to have been accidental or justifiable under the Mahomedan law and the regulations. *Reg. IX. 1807, sect. 9, cl. 1.*

If the homicide was accidental or justifiable, the accused is to be released.

The principal of the above rule is applicable to persons privy to or incidentally accessory to heinous crimes.

Bail may be admitted in all cases not declared unbailable.

The session judge may admit to bail.

1630. The principle of the preceding clause is applicable to persons appearing, from the magistrate's inquiry, to have been only privy or incidentally accessory to crimes of a heinous nature, without being concerned therein as principals, or as aiding and abetting, procuring, or instigating the perpetration thereof; and in all cases, whether of trial before the magistrate or before the sessions, if the admission of bail has not been prohibited by the regulations, and the bail tendered appears sufficient for securing the appearance of the accused, he is to be admitted to bail, until sentence is passed upon the charge against him. Moreover, in special instances, wherein the session judge, on a report from the magistrate, or on other satisfactory

(a) In English law, bail is admissible in all cases below felony, unless it is prohibited by some special act of parliament; and to refuse or delay to bail any person bailable, is an offence against the liberty of the subject in any magistrate by the common law as well as by the statute. By statute 7 Geo. IV. cap. 64 it is provided that if a charge of felony is supported by positive credible evidence of the fact, or by evidence which, if not explained or contradicted, raises a strong presumption, in the opinion of the justices, of the guilt of the party charged, he is to be committed for trial; but if the evidence in support of the charge is not in their opinion such as to raise a strong presumption of guilt, or if evidence is adduced on behalf of the prisoner which weakens the presumption of guilt, but if nevertheless there appears sufficient ground for a judicial enquiry, the prisoner may be admitted to bail. *Blackstone's Commentaries, book 4, chap. 22; and note by Christian.*

information before him, deems it just and proper to admit to bail a person charged with an offence not bailable under the general provisions contained in the regulations, he is competent to instruct the magistrate to accept sufficient bail, instead of keeping the accused in confinement while the charge against him is under trial. The judge may likewise, in all bailable cases, wherein the bail required by the magistrate appears excessive, direct the magistrate to receive such bail as may be deemed sufficient to answer the purpose intended by it. Reg. IX. 1807, sect. 9, cl. 2.

in cases declared not bailable;

and may direct the magistrate to reduce the amount of bail required by him.

1631. In cases committed for trial to the sessions, the session judge may exercise the power vested in him by the above provisions by instructing the magistrate to admit to bail any persons whom he has committed to close confinement, until they can be brought to trial at the sessions, if the offence charged appears to be of a bailable nature; or, though not within the description of offences declared bailable by the regulation, if the judge is of opinion that there is special reason for admitting the prisoner to bail, and sufficient bail is tendered by him, to stand his trial at the sessions. Reg. VI. 1818, sect. 3, cl. 3.

So, in cases committed to the sessions, the judge may always admit to bail.

1632. The session judge is further competent to hold to bail, or to direct the magistrate to admit to bail, any prisoner, whose trial is referrible to the nizamat adawlut, in consequence of the judge not concurring in the futwa of the law officer for the conviction of the prisoner. When the prisoner is unable to find bail, the judge should, with the least possible delay, transmit the proceedings, with a letter stating the grounds on which he does not concur in the futwa, to the nizamat adawlut; and the law officers of that court are to deliver their futwa, as soon as possible after the receipt of the trial, for the early sentence or order of the court. Reg. XIV. 1810, sect. 7.

In what cases the judge may admit to bail prisoners whose trials are referrible to the nizamat adawlut.

Rule to be observed when the prisoner cannot find bail.

1633. At the termination of a trial by a session judge, the commissioner of circuit is not competent, under any circumstances, to direct that the prisoner shall be held to bail pending the reference to the nizamat adawlut. N. A. R. vol. 4, page 332.

Superintendent of police cannot interfere in regard to the bail in such cases.

1634. The session judge is not competent to admit to bail, pending an appeal to the sudder court, a prisoner whom he has convicted and sentenced. Reports *L. P.* 1854, part 2, page 324.

Judge cannot admit to bail pending appeal to sudder court.

1635. When a prisoner on bail has not been apprehended until some time after the date of his sentence by the nizamat adawlut, a special report should be made to that court, through the session judge, for their orders as to the date from which the sentence should commence. N. A. R. vol. 3, page 49.

Persons on bail in such cases not being apprehended for some time.

1636. The session judge is at all times competent to require the magistrate to suspend execution of his order, and to direct the release of a prisoner on bail, until he shall have passed his final order, when justice appears to require that measure, whether he has or has not examined the proceedings on which the order is founded. Const. Nos. 489 and 657.

The judge when calling for explanation, may direct admission of bail, although he has not examined the proceedings.

1637. Whenever any persons charged with bailable offences are detained under examination in custody, the grounds of their detention are to be stated under the head of remarks in the magistrate's statement No. 1; and the judge should return to the magistrate any

The grounds of detention of prisoners charged with bailable offences to be noted in statement No. 1.

statement in which the required information is not given. C. O. No. 49 of vol. 3; *L. P.* and No. 98 of vol. 3, para. 32 of magistrate's rules.

The judge should generally admit to bail through the magistrate.

1638. The session judge should generally direct the magistrate to admit to bail persons accused of criminal offences while under trial; but cases may arise, though rarely, which would warrant the judge in accepting bail himself in the first instance. Such cases, however, cannot be provided for by any general directions, and must depend on their own peculiar circumstances. Const. No. 111.

The bail-bond remains in force until final sentence has been passed.

1639. The bail bond of persons committed to the sessions is in full force until the trial is concluded, which is not until final sentence is passed; and no person on bail should be committed to jail until a final sentence involving imprisonment has been passed upon him. Const. No. 605.

A particular day should be appointed for the attendance in court of persons on bail.

1640. Magistrates are not to require respectable persons, held to bail on charges of a trivial nature, to remain for a length of time in constant attendance at the sudder station. A particular day should be appointed for the attendance in court of persons on bail, whenever a longer period than one week is likely to elapse between the proceedings. C. O. No. 287 of vol. 1.

Forfeiture.

Magistrate how to proceed when persons held to bail do not attend the sessions.

1641. Whenever a person held to bail for his appearance before the sessions neglects to attend at the appointed time, the magistrate is to call upon his sureties to produce him, and on their failure is to report the case, with any reasons assigned by them for the non-fulfilment of their engagement, to the session judge; who is to determine, and instruct the magistrate, whether the penalty of the security bond is to be immediately enforced, or whether further time is to be allowed to the sureties to produce the person for whom they are responsible. Reg. VI. 1818, sect. 4, cl. 1.

Recovery of penalty in such cases.

1642. When the judge, on consideration of the magistrate's report, directs the enforcement of the security bond, the magistrate is to proceed to recover the amount of the penalty from the sureties by the attachment and sale of any property belonging to them, in the mode prescribed for the attachment and sale of property in satisfaction of decrees of the civil courts; or if the amount demandable is not paid, and cannot be realized from any property belonging to the sureties, they are liable to confinement, by order of the magistrate, in the civil jail for a period not exceeding six months. Reg. VI. 1818, sect. 4, cl. 2.

In such cases magistrate cannot enforce the penalty without the permission of judge.

1643. The surety of a person held to bail for trial before the sessions failing to produce him, the bail becomes forfeited; but the magistrate should not enforce the penalty, until he has procured the permission of the session judge. Const. No. 290.

Rules for the enforcement of a bail-bond executed before a magistrate engaging to produce in his court a party charged with a criminal offence.

1644. Whenever a person, who has executed before a magistrate a security bond engaging to produce in his court a party charged with a criminal offence, fails to produce him, he is to be called upon to show cause why the penalty, to which he is liable by his engagement, should not be enforced; and unless satisfactory reason is assigned against enforcing the bond in whole or in part, it should be put in execution according to the same rules and by the same process observed by the civil courts in enforcing payment of money adjudged to be due by a decree. If the surety is dead, the magistrate is to proceed against

his heirs and executors to the extent of any property belonging to the deceased, which has come to their hands. On this account the bail bond should always specify the responsibility to which the heirs and executors of the surety will be liable in the event of his demise. A surety, or in the event of his demise his representative, may at all times obtain a discharge from further responsibility by delivering up the person for whom he is responsible; and magistrates should always attend to any application made to them for that purpose, at the same time requiring the persons so delivered up to find other and sufficient security. In carrying these rules into effect, when the magistrate has not received any special orders from the session judge or nizamut adawlut, he may exercise his discretion in not enforcing the penalty, either wholly or partially, when the circumstances of the case appear to call for indulgence, or any equitable reason exists for dispensing with the penalty. Const. No. 1233.

1645. All bail bonds for prisoners released upon bail are to be for a specific sum, the amount of which is to be determined by the magistrate, upon a due consideration of the case and the circumstances and situation in life of the parties, and are to contain a clause declaring the amount forfeited to government in the event of the condition of it not being performed. *Beng. Reg. IX. 1793, sect. 5. Ccd. Prov. Reg. VI. 1803, sect. 5.*

1646. The bail, to be taken in all cases of persons being held to bail for trial before the sessions courts, is to be in the form No. 29 of appendix A. *Reg. IX. 1807, sect. 10.*

1647. The bail to be taken for appearance before the magistrate is to be in the form No. 3 of appendix A. *Reg. IX. 1807, sect. 3, cl. 4.*

1648. In cases committed to the sessions, the magistrate is to bind over the complainant to appear and carry on the prosecution, and the witnesses to attend and give their evidence: the recognizances to be taken from such persons, as well as all bail bonds for prisoners released upon bail, are to be for a specific sum, the amount of which is to be determined by the magistrate, upon a due consideration of the case, and the circumstances and situation in life of the parties, and are to contain a clause declaring the amount forfeited to government, in the event of the condition of it not being performed. *Beng. Reg. IX. 1793, sect. 5. Ccd. Prov. Reg. VI. 1803, sect. 5.*

1649. Prosecutors and witnesses, whose attendance is necessary at the criminal courts, are to execute recognizances (mochulkas), in specified forms* before the police officers, to appear before the magistrate on a specific day; which is to be the day, whereon the accused is bound to appear if he has been admitted to bail, or on which he is expected to arrive at the magistrate's place of residence if he is to be forwarded thither under custody: the police officer, in whose presence the recognizance is executed, is to forward it with his report to the magistrate, and is to deliver to the prosecutor or witness a despatch addressed to the magistrate and drawn up after the form No. 40 of appendix A, which he is to be required to deliver in person to the magistrate unaccompanied by any officer of police. *Reg. XX. 1817, sect. 23, cl. 2.*

1650. Under the terms of the exemption contained in art. 1, schedule B, *Reg. X. 1829, viz. "mochulkas and recognizances taken from prosecutors and witnesses to secure atten-*

Forms.

What the bail-bond is to contain.

Form of bail-bond for trial before the sessions court;

and before the magistrate.

Recognizances.

To be taken by magistrate from prosecutor and witnesses to ensure their attendance at the sessions.

Recognizances to be taken by police officers from such persons to appear before magistrate.

*No. 38 and 39 Appendix A.

Such recognizances, as well as those taken by mu-

gistrate to secure attendance during investigation, may be on plain paper.

dance at criminal trials,"(a) the recognizances referred to in the two preceding paragraphs, as well as the mochulkas which it is the common practice for magistrates to take from parties in cases before them to secure their attendance during the investigation, may be taken upon unstamped paper. Const. No. 679.

Mochulkas to be required from defendants as seldom as possible; but if necessary, the prosecutor is to provide the stamp in the first instance.

1651. Mochulkas or recognizances should be required from defendants in petty cases, in order to secure their attendance, as seldom as possible; but, if it appears necessary in any particular instance to require a mochulka from the defendant, the amount of the stamp must in the first instance be provided by the prosecutor,—to be refunded by the defendant at the conclusion of the case, if the magistrate considers it proper to order a refund. Const. No. 1287.

SECTION VI.

OF SEARCH FOR STOLEN PROPERTY, AND OF UNCLAIMED PROPERTY.

Form of warrant.

1652. Warrants of search for stolen property are to be drawn out in the form No. 15 of appendix A. Reg. I. 1811, sect. 11, cl. 2.

To whom they are to be addressed.

1653. All search warrants, issued under this section, are to be addressed to the police darogah, within whose jurisdiction the house or premises required to be searched are situated, or to any other public and registered officer of police to whom the magistrate thinks fit to commit the execution of that duty. Reg. I. 1811, sect. 11, cl. 3.

Upon what information they may be issued.

1654. Search warrants for the recovery of stolen property are not to be issued, unless the complainant or informer makes oath or subscribes a solemn declaration that a robbery has been actually committed, and that he has reasonable cause to suspect that the effects stolen are lodged in such a house or place, or unless it appears incidentally, from any proceeding holden by the magistrate, that there are grounds to believe that stolen property is there deposited. Reg. I. 1811, sect. 11, cl. 4.

1655. Under these provisions a magistrate may issue, or require the magisterial authorities of another jurisdiction to issue a search warrant upon any incidental information before him. N. A. R. vol. 1, page 273.

Search in cases of plunder.

1656. The nizamat adawlut did not consider that any general rule should prevail either directing or prohibiting search for property in cases of plunder. But they were of opinion, that in particular instances the recovery of property so obtained should be attempted equally as that of stolen property, both for the indemnification of the owners and to obtain better proof against the perpetrators of outrages. There may be cases therefore in which, in the exercise of a sound discretion, the police and magistrate should endeavour to recover

(a) It may be useful to remark that these words are not inserted in the government copies of the regulations, or in the edition printed at the Baptist Mission Press; they were published afterwards as an "erratum."

plundered property; strictly, however, under the rules for the recovery of stolen property prescribed by Reg. XX. 1817. Reports *L. P.* 1852, part 1, page 494.

1657. Where a person made a false complaint of dacoity, having concealed property pledged to him with a view to defraud the owners of it, and the police searched his house, the court held that the search authorized by sect. 16, Reg. XX. 1817 is that of the house of a party against whom there is a charge of his having plundered or stolen property in his possession, not that of the house of a complainant, whom the police or the magistrate suspect of having made a false statement of a robbery, and of having fraudulently concealed property which had been placed under his charge and which therefore could not be plundered or stolen property. Proceedings of the nature of fraud may expose a party to a civil action, or to a criminal prosecution; but the measures taken must be of an appropriate and legal nature. *Colebrooke's Reports of Summary Cases*, page 111.

The house of the complainant cannot be searched on suspicion of false complaint.

1658. The darogahs of police are prohibited, except under the special orders of the magistrate, from searching the interior of any house or building for stolen property, unless a list of the articles missing is delivered or taken down in writing at the thana with a declaration, stating that a robbery has been committed, and that the informant, whether he is the owner of the property, or accomplice in the offence, or other person, has substantial ground to believe that the property is deposited in such house or place. Reg. XX. 1817, sect. 16, cl. 2.

Police officers are not to search the interior of a dwelling without written declaration, or special order from the magistrate.

1659. In the case of search warrants issued from the magistrate's office, the police officers are to report the execution of the process on the back of the warrant. Reg. XX. 1817, sect. 16, cl. 3.

Execution of warrants to be reported.

1660. The darogahs, when not specially instructed by the magistrate, are to transmit all representations made to them, regarding the receipt or concealment of stolen property, at or before the time when they proceed to the search, for the information of the magistrate, and for any orders which he may deem it necessary to issue on the subject. They are also to take the necessary precautions for preventing any such property from being clandestinely removed. Reg. XX. 1817, sect. 16, cl. 4.

Representations regarding stolen property are to be sent to the magistrate.

1661. The search for stolen property is to be proceeded on without previous notice being given to the owners or inhabitants of the house, and is uniformly to be made in the day time, unless there is substantial reason to believe that, in case of any delay, the property sought will be removed. The process is invariably to be conducted by the darogah, mohurir, or jemadar, in person; and if the darogah cannot himself proceed, he is to issue a warrant according to the form No. 41 of appendix A. The search is to be made in the presence of three or more respectable inhabitants of the village, in which the house or place searched is situated, who are to subscribe their names to the report made to the magistrate's office; and an opportunity is, in every instance, to be afforded to the occupant of the house of attending the search. Reg. XX. 1817, sect. 16, cl. 5.

Particulars relating to search.

What persons are to be present.

Opportunity to be given to accused to be present.

1662. When the search is made in the absence of the accused, it must be shown on the record that an opportunity was given him, or was sought to be given him, of being present. N. A. R. vol. 6, page 344.

If accused person is absent.

Magistrate may order the search to be made at night.

1663. If a magistrate has in any instance reasonable ground to apprehend, that stolen property will be removed if the search is postponed, he may order the search to be made immediately, whether it is during the day or night. Reg. I. 1811, sect. 11, cl. 13.

Caution against the surreptitious introduction of articles into the house under search.

1664. In conducting the search directed by the above rules, the police officers are to be careful that no articles of property are surreptitiously introduced into the habitation at the time of search; and no prosecutor, or informer, or any other person, is to be permitted to enter, unless he allows himself to be strictly examined in the first instance. Reg. XV. 1817, sect. 16, cl. 6.

Rules to be observed in searching zenanas.

1665. If the occupant of the house, ordered to be searched, is of such a rank in society as would render it improper and objectionable, according to the prevailing opinions and usages of the country, for the police officers to enter the zenana or apartments of the women, they are to give due notice for the removal of any women within the zenana; and after furnishing means for their removal in a suitable manner (if they are women of rank who, according to the customs of the country, cannot appear in public) they are to enter the zenana apartments for the purpose of completing the search, using at the same time every precaution consistent with these provisions for preventing the clandestine removal of property. Reg. XX. 1817, sect. 16, cl. 7.

When any property, alleged to be stolen, is found, what steps the police are to take.

1666. If, on examining the premises ordered to be searched, any property is discovered which is alleged by the complainant or informer, at whose instance the search is made, to have been stolen or plundered, or which there may be any other reasonable ground to believe has been acquired by theft or robbery, the police officers are to endeavour to trace the actual proprietor from whom the property has been plundered or stolen, and are to question the occupant of the house regarding the means by which the property was obtained; and in the event of his being unable to give a satisfactory explanation, they are to forward the property, together with the person in whose house it has been discovered, to the magistrate. Reg. XX. 1817, sect. 16, cl. 8.

Rules for the disposal of suspicious property found in the search but unclaimed.

1667. Should any suspicious property be discovered in the course of a search conducted under the foregoing provisions, and should no person lay claim to the same, the police darogah is to compare the articles with such lists of property stolen or plundered, as have been previously delivered in to the thana in other cases, and recorded in the register prescribed by cl. 13, sect. 8, of this regulation; and, in the event of the property corresponding with the amount given in the lists, he is either to send the articles for the inspection of the supposed proprietor, or is to summon him to the thana for the purpose of identifying his property. Reg. XX. 1817, sect. 16, cl. 9.

Particulars of the finding to be noted; and all property to be forwarded without delay to the magistrate with a particular despatch.

1668. On the occasion of searching a house under the foregoing rules, the police officer is to be careful to notice the particular spot in which the property is found, the time of finding, and the name of the finder; and all property which is claimed as having been stolen or plundered, as well as all property of a suspicious nature found on persons charged with robbery, burglary, or theft, or which is seized by police officers under suspicious circumstances, is to be forwarded without delay to the magistrate together with a dispatch drawn up in the form No. 12 of appendix C. A copy of the despatch being registered as

prescribed by cl. 11, sect. 8 of this regulation, the original is to be given to the burkundaz, charged with the conveyance of the property, to be delivered to the nazir on his arrival at the sudder station. Reg. XX. 1817, sect. 16, cl. 10.

1669. Police officers are to be particular in the transmission of the despatch prescribed above. A session judge, presiding at any trial at all depending on the question of the discovery of stolen property by police officers on a search, is to enter the original despatch upon the record of the trial. C. O. No. 247 of vol. 1.

Care is to be taken regarding this despatch, which is to be filed in original on the record of trial in sessions court.

1670. Articles of value, and of small bulk, are to be fastened up in a box, petarah, or bag, and the seal of the thana affixed. Each article of property is to have a separate number (written on paper with the seal of the thana attached to it) to correspond with the number contained in the first column of the despatch, and darogahs, when describing the property in their reports, are invariably to quote the number affixed to each article. Reg. XX. 1817, sect. 16, cl. 11.

Rules for transmission of valuable articles of small bulk.

1671. Police officers are to pay strict attention to this rule, as the magistrate and session judge are required to number and describe the property in their proceedings according to the number and description used in the despatch of the police officer. C. O. No. 276 of vol. 1.

Care is to be taken by police officers in numbering and describing each article.

1672. No property is to be removed from a house by a police officer, unless it is claimed or recognised as having been stolen or plundered, or considered to be suspicious; and no property, once removed, is to be returned without the special instructions of the magistrate. Reg. XX. 1817, sect. 16, cl. 12.

Only claimed or suspicious property is to be removed; and none to be returned without orders from the magistrate.

1673. On the occurrence of a heinous robbery, burglary, or theft, the darogah is to transmit a list of the property stolen to the proprietor or manager of the estate, in which the crime has been committed, with an injunction to cause the list to be affixed in a conspicuous place, and also published in the several bazars and haths situated in the estate; at the same time requiring all gold and silver smiths, retail dealers, and other persons, to give notice to the police officers against persons offering such articles for sale. Reg. XX. 1817, sect. 16, cl. 13.

A list of the property stolen is to be published in the neighbouring bazars; and persons to whom it is offered for sale are to give notice to the police.

1674. Whenever the person, in whose possession stolen property is found, denies all knowledge of the theft or robbery, and asserts that he procured the property by honest means, the police officers are to require him to state the circumstances under which he became possessed of the property, and are to endeavour to ascertain through whose hands it has passed, as well as to trace the persons by whom the robbery or theft has been committed. Reg. XX. 1817, sect. 16, cl. 14.

Inquiries to be made by police from persons in whose possession the property is found.

1675. If the person, in whose possession the property was found, is unable, after the above and such further examination as the magistrate may make, to give a satisfactory account of the means by which it was acquired, and the magistrate, on consideration of that and all the other circumstances of the case, thinks that there are strong grounds for believing that the property was actually stolen or otherwise illegally acquired, he is to detain the property, and issue a publication (supposing no person to have hitherto appeared to claim it)

How the magistrate is to proceed in such cases.

specifying the particular articles of property discovered and suspected to have been stolen or otherwise dishonestly acquired, and requiring any person who has claims to it to appear and establish his right thereto within six months from the date of the said publication. Reg. I. 1811, sect. 11, cl. 8.

If claim be made.

1676. Whenever any person advances claims to property so discovered, the magistrate is of course to put the case into a regular course of prosecution under the general regulations. Reg. I. 1811, sect. 11, cl. 9.

If no claim be made, and if the party found in possession cannot prove his right, the property is to be confiscated.

1677. If no person appears within the six months to claim the property, and if the party in whose possession it was found has been unable to show that it was legally acquired, and to remove the suspicions which existed that it was dishonestly obtained, the property is in such case to be declared by the magistrate confiscated to government. Reg. I. 1811, sect. 11, cl. 10.

Persons finding suspicious property in their own premises how to proceed.

1678. Any person who finds within his house or premises property not his own, which he has reason to believe lost or stolen property, or to have been deposited within his house or premises with a malicious intent, is to convey it within twenty-four hours after finding it to the nearest darogah, and to report the circumstances attending its discovery. The darogah is to commit to writing the circumstances which are stated by such person, and to cause the same to be signed by him, and attested by two or more witnesses present. Such attested writing, together with the property found, is then to be forwarded by the darogah without delay to the magistrate. Reg. XX. 1817, sect. 16, cl. 15.

Confiscated ornaments and utensils to be broken up and sold.

1679. Whenever the necessity may, in the opinion of the magistrate, cease to exist for retaining any longer any gold or silver ornaments, or brass or copper utensils, which have been confiscated to government, such ornaments and utensils are to be broken up and sold at his public catcherry as bullion or old metal. Reg. I. 1811, sect. 11, cl. 11.

All unclaimed property belongs to government.

Rules for its transmission.

1680. All unclaimed property, whether cattle, boats, timbers, or other goods or chattels, is to be considered as belonging to government, and the police darogahs are to forward any property of this description, which may come into their hands, to the magistrate; or, if any article of unclaimed property cannot be easily moved, the darogah is to make over charge of such article to the local zumeendar, manager, or head person of the village, until the orders of the magistrate in regard to its disposal can be obtained. (a) Reg. XX. 1817, sect. 16, cl. 16.

Custody and disposal of unclaimed property, and of property of persons dying intestate.

1681. Unclaimed property is not to be confounded with the property of persons dying intestate (lawaris). All property of the former description, which comes into the hands of the police officers, is to be forwarded under the above provision to the magistrate, with whom the disposal of it clearly rests, subject of course to the control of the superintendent of police and government, without any interference on the part of the civil court. With regard to the custody and disposal of the property of persons dying intestate, cl. 7, sect. 16, Reg. III. 1803 (*Beng.* sect. 7, Reg. V. 1799) contains a specific provision to the effect that should no claim be preferred to it for twelve months, an inventory of the property, together with a report of the circumstances of the case, is to be submitted by the judge to govern-

(a) For rules regarding the discovery of hidden treasure, *vide* Reg. V. 1817. The authority with whom the disposal of it rests in such cases is the civil judge.

ment; whenever therefore any property of that description comes into the hands of a magistrate, he should forward it immediately^(a) to the civil judge. C. O. No. 3 of vol. 3. Const. No. 927.

1682. The articles of war, Nos. 102 and 103, vest the administration of the estate of any deceased officer or soldier, or person receiving public pay drawn by any officer in charge of a public department belonging to the army, in the military authorities, whenever there may be no heir or executor of the deceased on the spot at the time of decease, thereby precluding the jurisdiction of the civil courts in regard to the same. Whenever therefore any such property may come into the hands of a magistrate, he is, instead of forwarding it to the judge of the district, to communicate with the officer commanding the regiment or in charge of the department to which the deceased belonged, and to comply with the instructions which such authority may give regarding the disposal of it. C. O. No. 57 of vol. 4. *W. P.*

If the deceased person belonged to the army.

1683. Registers of unclaimed property and property of intestates, disposable under the above rules, are to be kept in the prescribed forms given in Nos. 14 and 15 of appendix B. C. O. No. 151 of vol. 3.

Registers of such property.

1684. A magistrate has no authority to direct the search of a house for the discovery of contraband opium *as such*; but he is not restricted from searching for the discovery of opium or any other deleterious drug, which, from information before him, he has reason to believe has been used as an instrument of death, and of which he considers it necessary for the ends of justice that a discovery should be effected. Const. No. 1241.

Magistrate's competency to search houses for opium.

1685. The search for plundered or stolen property, whether under the special orders of the magistrate, or under information received by the native officers of police, is to be conducted agreeably to the foregoing provisions; and the magistrate is to take proper notice of any instances in which the police officers deviate from the rules laid down in them. C. O. No. 55 of vol. 2.

Police officers are to pay strict attention to the above rules.

SECTION VII.

OF DISTRRAINT AND ATTACHMENT.

1686. Landholders, farmers, and their local agents, or other persons empowered by the regulations to distrain for arrears of land rent, who may be opposed, or may be apprehensive of resistance in effecting the regular distrainment, or in maintaining possession of property previously distrained, may apply to the darogah of the thana, in whose jurisdiction the property is, for assistance in making or maintaining the regular distrainment; and the darogah, in order to support the distrainer and to prevent a breach of the peace, on the

Upon application from an authorized distrainer for arrears of land rent, who is opposed, or apprehensive of resistance, the darogah is to depute a peon with a written process.

(a) In the rules passed by the Bengal Government "for the guidance of deputy magistrates and assistants in charge of sub-divisions," dated February 18, 1846, it is directed that this kind of property should be forwarded weekly through the magistrate to the civil court. See page 158.

distrainer certifying on oath or by a solemn declaration the opposition he has experienced, or the resistance which he apprehends, is to depute a muzkooree peon, with a written process, bearing the seal of the thana and the signature of the darogah, and drawn up according to the form No. 42 of appendix A.(a) Reg. XX. 1817, sect. 27, cl. 2.

Duties of peon so deputed,

1687. It is the duty of the muzkooree peon to exhibit such process to the defaulter, and to use every means in his power to prevent resistance or other breach of the peace; and, unless the arrear be liquidated, to support the distrainer in the exercise of the powers vested in him by the regulations.(b) He is to give due attention to the whole conduct and proceedings of the distrainer, so as to be able to give evidence thereon, if afterwards required either before the judge or magistrate. Reg. XX. 1817, sect. 27, cl. 3.

If such peon be opposed, the darogah, mohurir, or jemadar is to proceed to his assistance.

1688. Whenever any peon so deputed deposes that he has been opposed in the execution of such duty, or the darogah is satisfied, from the representation made on oath [or solemn declaration] by the distrainer in the first instance, that any resistance has been offered, amounting or likely to amount to a breach of the public peace, the darogah is either to proceed in person or to depute the mohurir or jemadar to support the distrainer and maintain the peace. He is also to proceed in person, or to depute the mohurir or jemadar, whenever it is proposed by a distrainer, under the powers vested in him by the regulations,(b) to force open the outer door, or to search the private apartments, of a dwelling house in which the distrainable property of a defaulter appears to have been concealed. Reg. XX. 1817, sect. 27, cl. 4.

Dwelling houses can be forced open in the presence of these officers only.

(a) Such cases should not be entered in the statements as attempts at affray. Police Report for 1843, para. 218.

(b) The following are the provisions under which a distrainer may force open places for the purpose of attaching property; they are expressly modified by the provisions in the text.

Distrainers are empowered to force open any stable, cow-house, barn, golah, granary, or other building, and to enter any dwelling house, the outer door of which may be open, (excepting the apartments in such dwelling house which may be appropriated for the zenana or residence of women), and to break open the door of any room in such dwelling house, for the purpose of attaching any property belonging to a defaulter which may be lodged therein. But if any person shall enter a dwelling house, or break open any stable, cow-house, barn, golah, granary, or other building, not occupied by, or in the possession of the defaulter, to destroy property belonging to him, and no such property shall be found therein, the distrainer shall be liable to prosecution by the occupant or possessor, for entering such house, or breaking open such stable, or other building, and the court shall award to him damages according to the circumstances of the case, with all costs of suit. When a distrainer may have reason to suppose that the property of a defaulter is lodged within a dwelling house, the outer door of which may be shut, or within any apartment appropriated to women, which by the usage of the country is considered private, he is at liberty to represent the same to the police darogah, within whose jurisdiction the house is situated; and on such representation the police darogah is to send a police officer to the spot, in the presence of whom the distrainer is authorized to force open the outer door of the dwelling house, in which he may have reason to suppose the defaulter's property to have been lodged, in like manner as he is above authorized to break open the door of any room within a dwelling house, except the zenana. He may also, in the presence of the police officer, after due notice given for the removal of any women within the zenana and after furnishing means for their removal in a suitable manner, if they be women of rank who according to the custom of the country cannot appear in public, enter the zenana apartments for the purpose of attaching any of the defaulter's property deposited therein; but such property if found shall be immediately removed from such apartments, after which they are to be left free to the former occupants; and nothing in this section is to be understood to authorize any distrainer, or his agent, to force open the outer door of a dwelling house, or to enter the apartments of women, which by the usage of the country are considered private, in any other mode than that herein prescribed; a wilful deviation from which will subject the offender to heavy damages, besides forfeiture of the arrear of rent on account of which the distress may be levied. *Beng. Reg. XVII. 1793, sect. 21, modified by Reg. VII. 1799, sect. 10. Ben. Reg. XLV. 1795, sect. 19, modified by Reg. V. 1800, sect. 10. Ced. Prov. Reg. XXVIII. 1803, sect. 19, cl. 1 and 2.*

1689. The regular burkundazes of the police establishment are not to be employed to aid distrainers for arrears of land rent, except in cases where the darogah, mohurir, or jemadar, proceeds in person under the rules above prescribed. Reg. XX. 1817, sect. 27, cl. 5.

Burkundazes are to assist in distraint only under the orders of these officers.

1690. Any person in whose favor a summary award of the civil court has been passed for the (indigo) produce of a defined spot of land, may place a watch over it to prevent the cutting and removal of the plant; and in the event of any attempt being made to remove it, he may apply to the nearest police darogah, whose duty it is, on such a decree being exhibited, to give every aid in his power. Reg. VI. 1823, sect. 4, cl. 1.

In the case of a summary award for indigo plant.

1691. The landholders, farmers, and other local agents, and indigo planters, and other persons, are prohibited from using stocks, or any other instrument of restraint, for the purpose of confining ryots, or other individuals indebted to them, on any account whatever; and the darogahs of police are to report to the magistrates, for such orders or process as appear proper under the general regulations, all instances which come to their knowledge of a violation of this rule. Reg. XX. 1817, sect. 27, cl. 6.

Landholders, indigo planters, and others are not to use stocks or other instruments of restraint.

1692. Whenever a muzkooree peon, not receiving wages from government, is employed by a police darogah under the above provisions, he is to receive tulubana from the person, at whose instance he is employed, at the rate of two annas per diem; and the darogah is not to issue any process by the hands of a muzkooree peon, until the estimated amount of the tulubana, required for his fixed allowance at the above rate during his employment, is deposited in advance. The darogahs are enjoined to prevent the muzkooree peons from demanding or receiving, directly or indirectly, from any party, in cases in which they are employed, any allowance or gratuity, exceeding the above rate; and are to report to the magistrate any instances which come to their knowledge of a violation of this rule. Reg. XX. 1817, sect. 27, cl. 7.

Allowance and mode of payment of peons, not in the service of government, employed under the above provisions.

1693. In order to check as much as possible the employment of muzkooree peons in cases not strictly provided for in the regulations, magistrates are to require their darogahs to report whenever they employ persons of that description; stating their reasons for so doing, and by whom the tulubana (which is never to exceed the rate specified above) has been defrayed. C. O. No. 329 of vol. 1. *

Check on the employment of muzkooree peons by the police.

1694. The practice of retaining a number of peons at the thana, for the ostensible purpose of aiding in the distraint of property under the rules of sect. 27, Reg. XX. 1817, is irregular; and leads to much extortion and oppression by their constant illegal employment in police matters, and the consequent demand of tulubana in such cases. Magistrates are to leave with each darogah only sufficient badges for him to use as he may have occasion. C. O. Sup. Pol. L. P. No. 10 of 1844.

Muzkooree peons are not to be retained at the thana; but are merely to be employed as required.

1695. It being a frequent practice with under-tenants to lodge unfounded complaints in the criminal courts against persons attaching their property, as well as against the officers employed in collecting their rents, and likewise to cause their being summoned as witnesses in causes with the merits and circumstances of which they are totally unacquainted, for the

Unfounded complaints by under-tenants against distrainers or persons collecting rents.

sole purpose of creating embarrassment and delay in the collection of the rents, the courts of justice are required at all times to discourage and punish such culpable practices, as far as the power vested in them by the regulations may admit. Sect. 10, Reg. IX. 1793,* is to be strictly enforced in all cases of litigious and unfounded complaints, of the nature herein referred to, before the magistrate. *Beng. Reg. VII. 1799, sect. 12. Ben. Reg. V. 1800, sect. 12.*

Breach of the peace in resisting legal attachment.

1696. If any under-tenant resists or causes to be resisted the legal attachment of his property for arrears of rent, he and all persons concerned with him in resisting the attachment are liable to be apprehended and prosecuted before the criminal courts for any breach of the peace committed by them in such resistance to the attachment. *Beng. Reg. VII. 1799, sect. 9. Ben. Reg. V. 1800, sect. 9. Ced. Prov. Reg. XXVIII. 1803, sect. 17, cl. 2.*

Custody of property attached and responsibility of person taking charge of it.

1697. No person can be compelled against his will to take charge of property distrained, or attached. If however any one should take charge of the property voluntarily, he of course becomes responsible for the faithful discharge of his engagement, and is liable to prosecution before the civil court for damages which may have arisen from his failing to do so. No summary proceedings, however, can be instituted against him. Generally the person, at whose instance the property is distrained or attached, must be considered answerable for the safe custody of it during the period of distraint or attachment. *Const. No. 958.*

Punishment for breach of attachment made by magistrate.

1698. In cases of distraint for arrears of rent, the punishment for resisting or breaking attachment, as prescribed by sections 19 and 20, Reg. XVII. 1793 and the corresponding enactments for Benares and the ceded provinces, consists of imprisonment and damages to be enforced by the civil courts. But there appears to be no enactment regarding such offences where the distraint has been made by the magistrate; and it would seem that he must proceed as in a case resistance of process, for which subject see section 10, page 314.

SECTION VIII.

OF EXECUTION OF PROCESS WITHIN THE LIMITS OF THE SUPREME COURT.

Nizamut adawlut may execute as in other places.

1699. It is lawful for the court of nizamut adawlut to execute or cause to be executed, upon all persons subject to the jurisdiction of such court, all manner of lawful process of arrest within the limits of the town of Calcutta, in the same manner as such court may, by virtue of any power now vested or hereafter to be vested in it, lawfully execute or cause to be executed such process in any place without the said limits, any Act, charter, or other matter or thing to the contrary notwithstanding; provided always that all such process, which is executed within the limits aforesaid, is in writing, and has underwritten or indorsed thereon, or otherwise annexed thereto, a translation thereof, or of the substance thereof, in the English language and character, signed by one of the judges of the court from whence it issued. 53 George III. cap. 155, sect. 113.

Process to be in
and signed by a
judge.

1700. The provisions of Act VII. 1854, and of this Act [under which every criminal process, issued in one part of the territories under the government of the East India Company, may be executed within the jurisdiction of any other magistrate if endorsed by him, for which see paras. 190 to 200], do and shall extend and apply to any warrant or other process of any magistrate having jurisdiction in the territories beyond the local limits of the supreme court, which shall be executed within those limits. Provided that, if a magistrate having jurisdiction within those limits shall object to endorse any warrant or other process on account of any apparent defect therein, or for any other cause, he shall refer such warrant or other process to a judge of the supreme court, who shall deal therewith according to the provisions of Act XXIII. 1840. Act XVII. 1856, sect. 3.

Mofussil courts to send process to be indorsed by magistrate, who may refer to judge of supreme court; and the latter will deal with it under the following rules.

1701. Any writ, warrant, or other process, issued by any court, judge, or magistrate, in the territories beyond the local limits of the supreme court, may be executed within those limits in manner following:—a copy of such writ, warrant, or other process authenticated as such by the attestation of the court, judge, or magistrate, signing or issuing the same, accompanied by a certified translation in the English language, is to be presented to any judge of Her Majesty's court, who may thereupon, under his hand and signature, indorse and direct the same to be executed by the sheriff, or by any justice of the peace, according to the nature of the process. Act XXIII. 1840, sect. 1.

Mofussil courts may execute by sending copy of process for the indorsement of a judge of the supreme court.

1702. Upon the delivery of the process so indorsed to the sheriff, he is to make a memorandum of the date of such delivery, and is to execute the process in like manner as if it had originally issued from Her Majesty's court, and had been delivered at the date as appearing by the memorandum; and the sheriff is to make no distinction as to priority or otherwise between the execution of any process originally issued from Her Majesty's court, and the execution of any process under this Act. But all processes, whether original, or indorsed as aforesaid, are, amongst each other, to be subject to the same rules touching the mode and order of execution as are now established in respect of processes originally issued from Her Majesty's courts of justice. Act XXIII. 1840, sect. 2.

Such copy to be delivered to sheriff who is to execute it as a process of the supreme court.

1703. The sheriff is liable to be proceeded against in Her Majesty's courts of justice for all matters touching the execution of any process executed under this Act, in like manner as if the same had originally issued from Her Majesty's court. And all persons and property seized or detained under any process executed by virtue of this Act are to be dealt with in like manner as if such persons or property had been seized or detained under the like process issued from Her Majesty's court. Act XXIII. 1840, sect. 3.

Sheriff may be proceeded against regarding the execution of,—and persons and property to be detained under,—such process, as if process of supreme court.

1704. All persons disobeying or obstructing the execution of any process indorsed under this Act are punishable in Her Majesty's courts of justice, in like manner as if the same had issued from such courts; provided that, in the case of process for attendance of witnesses, Her Majesty's courts are to be governed by the like rules touching expenses and other matters as are established in regard to subpoenas issued from such courts. Act XXIII. 1840, sect. 4.

Persons disobeying or obstructing execution to be punishable as if process of supreme court.

1705. In the case of persons seized or detained by virtue of any process executed under the authority of this Act by any justice of the peace or sheriff, it is the duty of such justice of the peace or sheriff, if so required by the indorsement of the judge, to

Persons detained under such process to be delivered to the persons

indicated in the indorsement.

deliver the party in custody to such authority or persons as are particularly specified in such indorsement, and who have been charged with the execution of the process by the authority originally issuing it, and for that purpose to cause the party in custody to be conveyed to any place within the Company's territories beyond the jurisdiction of Her Majesty's courts. Act XXIII. 1840, sect. 5.

Judge of supreme court may remit the process for amendment;

1706. In the case of any process required to be indorsed under the authority of this Act, it is lawful for the judge, who is required to indorse the same, to remit it for amendment to the authority issuing the same, if it appears to be defective in any matter of form. Act XXIII. 1840, sect. 6.

and may direct bail to be taken.

1707. In the case of any process, required to be indorsed under the authority of this Act, for the seizure or detention of any person, it is lawful for the judge, who is required to indorse the same, to direct by indorsement that bail (the amount and number of sureties to be specified in such indorsement) may be taken; and for this purpose to call for such documents and to make such inquiry as he thinks proper. (a) Act XXIII. 1840, sect. 7.

Rules for service under the above provisions;
1st. How to be directed and sent.

1708. The following rules are to be observed in the service of processes under the above provisions. *First.* Every criminal process is to be directed to the justices of the peace of the town of Calcutta, but forwarded in an envelope to the Company's attorney, either by dawk or by the hands of a peon or other public officer as may be most convenient, with a letter drawn up in the form No. 43 of appendix A. The Company's attorney is to prepare it for indorsement by a judge of the supreme court, and after indorsement to transmit it (accompanied with the letter above-mentioned) to the police office for execution. *Second.* Any money, that it is requisite to send, is to be remitted by a bill on the general treasury from the collector of the district. *Third.* All subordinate judicial officers are to submit the processes of their courts, which require execution under the above provisions, to their European principal, to be by him forwarded in the prescribed manner to the Company's attorney. *Fourth.* All processes are to be drawn up agreeably to the forms Nos. 44 to 53 of appendix A, or agreeably to such other forms as may from time to time be circulated by the nizamat adawlut. *Fifth.* The party, at whose requisition any witnesses are summoned, must be prepared to pay to the witness such sum for his expenses as the judges of the supreme court consider reasonable and proper. *Sixth.* Judges and magistrates are to be careful that their own processes are drawn up correctly, and they are also to ascertain that the processes of the subordinate courts, that are forwarded to the Company's attorney, are drawn up agreeably to these rules and to the Acts and regulations of government. C. O. Nos. 82 and 185 of vol. 3.

2nd. Money how to be sent.

3rd. Process of subordinate court.

4th. Forms.

5th Expenses of witnesses.

6th. Processes to be drawn up correctly.

Further forms.

* *v. para.* 1581.

1709. In cases of failure to serve summons, the warrant to be issued under Act X. 1845* is to be drawn out in the form No. 54 of appendix A. For form of writ for attachment of property of persons absconded, see No. 55 of appendix A. C. O. Nos. 205 and 232½ of vol. 3. And for form of warrant upon report of a police officer or upon credible information, see No. 55½ of appendix A. C. O. No. 24 of vol. 4.

(a) It was decided in the case of *Lang versus Gubbins* (1851), that bail taken under this provision cannot be declared forfeited by any other authority than a judge of the supreme court.

1710. If these circulars do not provide an appropriate form for any legal process, the magistrate should suggest one for the court's sanction. The object of the circulars is that all courts may send the like form for each process to be submitted to a judge of the supreme court under Act XXIII. 1840 ; and that the judges of that court may have a certain and authentic means of knowing what processes and forms are legal and regular under the law in the mofussil. Letter of Nizamut Adawlut to Magistrate of 24 Pergunnahs No. 1415, October 6, 1852.

Magistrate may suggest other forms.

1711. As there is no provision in sect. 2, Act XVI. 1850 for distraining and selling the goods of an offender in another jurisdiction, so application cannot be made to the supreme court to give effect to process of dstraint and sale issued in accordance therewith. Letter of Nizamut Adawlut to Magistrate of 24 Pergunnahs No. 1415, October 6, 1852.

Where law does not provide for execution in other jurisdiction, no application can be made to supreme court

1712. A strict compliance with the terms and requirements of Act XXIII. 1840 is enjoined on all magisterial functionaries. C. O. No. 49 of vol. 4.

Strict attention required to these rules.

1713. Whenever a magistrate has occasion to apply for the apprehension of an individual in Calcutta, he is invariably to depute an officer of his own court for the purpose of identifying and receiving charge of such person, and of undertaking the responsibility of securing his appearance at the station of the magistrate, without exposing such individual to the hardship of unnecessary detention at the presidency. C. O. No. 40 of vol. 2, and No. 49 of vol. 4.

In the case of process of arrest an officer is to be deputed to receive charge of the person arrested.

SECTION IX.

OF AID TO BE GIVEN TO PROCESS OF SUPREME COURT.

1714. When a sheriff's officer, entrusted with the execution of a writ of *capias* issued by the supreme court against parties residing in the mofussil, has occasion to call upon the magistrate for assistance, the magistrate ought to render it : but such assistance must be confined to the legal execution of the writ ; as for instance the police officers furnished by the magistrate ought not to aid the bailiff in breaking into a house (though they accompany him if he enters the premises without breaking in) ; but they ought to prevent any breach of the peace when the arrest is made, or rescue after it has been made. In regard to the question how far the magistrate is required to assist the sheriff's officer in conveying a prisoner to Calcutta, it seems that he must be guided by the peculiar circumstances of the case ; *i. e.* he *may*, without incurring any legal responsibility, take such measures as are necessary to insure the peaceable execution of the process within the limits of his jurisdiction : but the bailiff is equally empowered, after the arrest, to take steps before the nearest justice of peace to have the prisoner bound over to keep the peace towards him, or to hire a sufficient number of persons to prevent his escape. *Opinion of the Advocate General* in C. O. Nos. 231 and 232 of vol. 3.

How far a magistrate is bound to assist a sheriff's officer in the execution of a writ of *capias* ; and in the conveyance of the prisoner to Calcutta.

Execution of decrees not to be aided without writ.

Tenants are not to be dispossessed of land contrary to law.

A magistrate was directed not to give forcible aid to expel from possession a party who hold under a decree of a competent provincial court.

Remarks of chief justice of supreme court in regard to assistance to be given in the execution of writs of that court.

1715. The civil courts are not to interfere with the execution of the decrees of the supreme court, unless a writ directing execution is issued by that court. Const. No. 567.

1716. Magistrates, and other public officers, are bound to give all the assistance in their power to the enforcement of a writ of the supreme court; but they have no power to remove tenants having tenures and rights, of which by the law they cannot be deprived by a mere change of proprietor. C. O. S. D. A. No. 31, May 20, 1831.

1717. In execution of a decree of the supreme court in favor of A, founded on a deed of mortgage executed by B, the magistrate was considered to have acted judiciously in refusing to use forcible means to oust a third party from property in their possession, which they held under a decree of the provincial court founded on a deed of agreement executed by B; and he was directed to confine his aid and assistance to the sheriff's bailiff to preventing any breach of the peace in the execution of his duty, leaving the mortgagee to sue the third party in the zillah court. Const. No. 800.

1718. The following remarks were made by Sir L. Peel C. J. in his judgment in the case of *Andrew versus Lyon*, on the 8th July 1853, and were circulated by order of government. "The jurisdiction of this court is declared as to persons. No native occupying lands in the mofussil is subject to the jurisdiction of this court by reason of such occupancy. Unless he be an inhabitant of Calcutta, or unless a special character, which may attach to him by an act or contract of his own enuring to that effect, establishes his liability to jurisdiction, he is free from it; consequently this court has no jurisdiction, in the former case, to try that native's title to the occupation of lands, or to dispossess him of them. But if a person who is subject to the jurisdiction of this court occupy lands in the mofussil, or is landlord to those that do, then his title in the one case to occupancy, in the other to the landlord's or zumeendaree title, may be tried in this court between the claimant of them and himself. Any one may be the plaintiff, though the jurisdiction is limited as to defendants. Consequently if a British subject, or other person subject to the jurisdiction of this court were a ryot, or occupier of lands in the mofussil, and one claimed those lands from him, and sued him by ejectment in this court, he could shew, if such were the case, that the lessor of the plaintiff (i. e. the claimant) had no real title even to the zumeendaree, and also that if he had, he, the defendant, had a right or estate, which entitled him to hold the possession as occupier, and therefore that the claimant was not entitled to the actual possession. It is the actual possession which is sought in ejectment, though of course delivery of that possession will vary with the nature of the thing sought,—in some cases it can be little more than nominal, as for instance if a public road were recovered in ejectment, or as if tithes in England were so recovered, for which, though an incorporeal right, ejectment lies by a provision of the legislature in early times. It often happens in England that the tenants are never meant to be disturbed, the possession is then given by attorney to the claimant; and often ejectments are brought with this express object; but in England the actual tenants or occupiers are subject to the jurisdiction of the court: here they often are not, consequently in those cases the practice in ejectment, which is a flexible form of action, a mere fiction in form for the more convenient trial of the right, is made conformable to the different state

of circumstances: the tenant is served with notice, that he may, if he thinks fit, defend the title against a new landlord; for he may not like the new as well as the old landlord; therefore for this reason only notice is given to him, not with any view to compulsory dispossession of him. Ordinarily he takes no part in the matter, but the landlord defends, or else the suit is not defended: if it is not defended, our rule requires a full affidavit of the liability of the occupier and the jurisdiction of this court: if that affidavit were falsely made, and that appeared, the execution of the writ would be at once suspended; and so far from resenting, we should be thankful to any one, whether in an official position or not, who pointed out to us the intended abuse of the Queen's court. The possession of the tenant is for many purposes considered in law as that of the landlord; and where the actual landlord does not defend, but is a British subject, or is otherwise subject to the jurisdiction of the court, then the rule of court is practically complied with by shewing his connexion with the property, and his liability to the court's jurisdiction. But in neither case, either of a defended ejectment, or where one is undefended and judgment goes by default, are the ryots to be dispossessed, or interfered with. But if one who is, or calls himself, a ryot, comes in and takes defence, then he may impeach the lessor of the plaintiff's or claimant's title, either as respects the zumeendaree or as respects his own occupation. He cannot be turned out of possession by this court, either directly or indirectly, on any grounds except those on which he might be dispossessed in a suit instituted against him in a mofussil court. The law is the same, for the law on which his rights are founded would be just as much respected here as in any other court. Consequently if the defendants in this ejectment stood on the rights of a ryot as to any parts of those lands, they had only to assert and prove them; and if they were such as enabled them to hold against the claimant, the claimant's title would have failed *pro tanto*. But they did not so; they took defence for the whole as landlords, and they failed as to that: they set up no right as tenants to a parcel of the lands, and did not even take defence in that character for any portion. If they had such title, it was their folly not to advance it; and if by error they had failed to insist upon it, and had applied to the court at any time before execution issued, the court had both the power and the wish to protect them from injury. The court has not the duty cast on it of executing its own writs. In any difficulty, if applied to, it would assist the sheriff with its advice. The sheriff cannot in the mofussil raise the body of the people as it were to help him. The duty is enjoined by the charter on the persons there described; and if that duty were wilfully and causelessly withheld, that might be punished in due course of law; but if those to whom the sheriff applies for aid *bonâ fide* believe that they would really be in error and trespassers in helping him, that would excuse them; the mere command of the government would be no legal excuse, unless that were conveyed in writing by the governor general in council in the mode directed by the statute. In that case they would be obeying the law in giving their aid to the sheriff, in the other they would violate it. Thus if the law be observed it is impossible that the executive and judicial authorities in the land can actually be drawn into collision. We have no reason to suppose that the decision of this court on a legal point would be disregarded. Their errors of judgment can be set right on appeal.

The duty of one who is called on to aid a sheriff is also a plain one. If he thinks the sheriff is doing wrong, he should not, while that impression is on his mind, aid him: he should state his doubts and ask for information; if that be given, and he still doubts, he can readily get the advice of the law officers of the government, or ask the sheriff to apply to the court for directions; if his doubts are dissipated, then it is his duty to act. If in that case the government order him to desist, then he should respectfully ask the protection which the statute gives him of a legal order in the prescribed mode. Unless that course be taken, the court of course could listen to no suggestion, that a man is ordered by a higher power not to act according to law; for, it is to be observed, it must hold that to be the law which it has declared by a legal judgment to be so. We have little doubt that now the rights of the parties have been explained, the sheriff will receive assistance, if necessary, to put the plaintiff in possession of those premises, which were actually in the possession of the defendant, or his agents or servants. C. O. Sup. Pol. L. P. No. 9 of 1853.

SECTION X.

OF RESISTANCE AND EVASION OF PROCESS.

All persons concerned in resisting legal process are to be apprehended by the police;

1719. If any person resists or causes to be resisted the execution of any legal warrant or process, which the officers of the magistrate's court or the police officers attempt to serve;—or endeavours to rescue any person arrested or under the custody of any such officers;—the darogah is to cause such offenders, as well as persons concerned in the resistance or rescue to be apprehended and forwarded to the magistrate with a report of the circumstances of the case and the necessary evidence. In case of actual rescue or violent resistance the darogah is, if necessary, to call in the aid of the police of the adjacent thanas, who are to conform to such requisitions, provided they are conveyed in writing. Reg. XX. 1817, sect. 26, cl. 1.

and brought before the magistrate. If they evade arrest they to be summoned by proclamation.

1720. If any person, amenable to the authority of the magistrates or police officers, resists or causes to be resisted any warrant, order, or other process of any magistrate or police officer, the magistrate of the zillah, in which such resistance has been made, on the same being charged on oath, is, if practicable, to cause the party accused to be apprehended, and brought before him to answer to the charge. If the party absconds or conceals himself, so that he cannot be apprehended, or if on any account he cannot be immediately apprehended, the magistrate is to cause a written proclamation (in the vernacular), requiring the party to appear to answer the charge against him within a fixed period, not less than one month, to be publicly read and proclaimed by beat of drum, and to be affixed in some conspicuous part of his cutcherry, as well as on the outer door of the house in which the party has usually dwelt, or some conspicuous place in the village in which he has generally resided. *Beng. and Ben. Reg. XI. 1796, sect. 2, cl. 1. Ced. Prov. Reg. III. 1804, sect. 2, cl. 1.*

1721. Before issuing such proclamations magistrates should satisfy themselves as to the existence of such proof against the party named in them as involves a strong presumption of his guilt. Government Order *W. P.* No. 2600, August 9, 1849.

Proof to be examined carefully.

1722. Commissioners are to take opportunities from time to time of examining and revising in communication with the magistrates the lists of proclaimed offenders in each district; striking out those persons against whom a sufficiency of proof does not exist, and making provision that the annulment of the proclamation be made known to the parties themselves and to their friends as well as to the police. Government Order *W. P.* No. 2600, August 9, 1849.

Lists of such persons to be revised by commissioners.

1723. Whenever a proclamation is issued through a police darogah, by order of a magistrate, requiring the attendance of any person, who has evaded or resisted the processes of the court, the darogah is, in the presence of two or more creditable persons not connected with the thana establishment, to cause such proclamation to be publicly read and promulgated by beat of drum, and affixed in the police thana, and on the outer door of the house which the party has usually inhabited, or some conspicuous place in the village in which he has generally resided. Reg. XX. 1817, sect. 26, cl. 11.

Mode in which police officers are to publish such proclamation;

1724. On the expiration of the period specified in the proclamation, if the offender does not appear to answer the charge alleged against him, the darogah is to certify to the magistrate the mode in which the proclamation has been issued, and the date, time, and place of promulgation, and is to send a sufficient number of witnesses to prove the due publication of the process. Reg. XX. 1817, sect. 26, cl. 12.

and, in case of non-appearance, to certify it to the magistrate.

1725. If the party so charged cannot be apprehended, and does not within the fixed period appear to answer the charge,—or, if he is apprehended or appears in pursuance of the proclamation, and after receiving his answer to the charge and hearing the evidence he adduces in his defence, it is proved to the satisfaction of the magistrate that he is guilty of the charge,—the magistrate is to pass judgment against him in the following manner. *Beng.* and *Ben.* Reg. XI. 1796, sect. 2, cl. 1. *Ced. Prov.* Reg. III. 1804, sect. 2, cl. 1.

After expiry of term fixed in proclamation, judgment may be had, whether defendant be present or not.

1726. If the offender is a zumeendar, talookdar, or other proprietor of land paying revenue directly to government; or the proprietor of altumgah, ayma, or other lands exempt from revenue; situated within the zillah or city in which the resistance was made, he is to declare such lands forfeited to government, and by a precept under his official seal and signature is immediately to give notice to the collector of the district, who on receipt thereof is to cause the lands in question to be attached on the part of government, and is to hold them in attachment till the receipt of a further precept from the magistrate to relinquish them, or of orders from government to be communicated to him as directed below. *Beng.* and *Ben.* Reg. XI. 1796, sect. 2, cl. 2. *Ced. Prov.* Reg. III. 1804, sect. 2, cl. 2.

If the offender be a landholder within the zillah, his lands are to be forfeited.

1727. It is incumbent on the collector to afford to the magistrate, upon a precept to that effect received from him, all the information that he may possess, or can procure, in order to assist the magistrate in identifying and specifying the lands or property, the attachment of which the magistrate may be desirous to order. This duty of the collector is therefore preliminary to

How the magistrate and collector are to proceed, when the former wishes to attach landed property.

Objections by third parties to be preferred to the magistrate.

Resistance to collector's proceedings punishable by magistrate.

If claims are referred to collectors.

Collector cannot realize expenses of management by sale of lands.

If the offender be a sudder farmer within the zillah, his lease is to be cancelled.

* See para. 1727.

If he be a landholder or sudder farmer in any other zillah, the same provisions apply.

But such orders are not final until confirmed by the nizamut adawlut.

The nizamut adawlut how to proceed on receipt of the proceedings in such case.

the issue of an order for attachment by the magistrate, who on the receipt of all the necessary information would issue judicial directions on the subject. The duty of the collector upon the receipt of these directions would consist solely in taking possession of the lands or property specified by the magistrate, and managing them to the best advantage until further orders. The objections of third parties to the attachment of lands, of which the collector takes possession on the direction of the magistrate, should be preferred to the magistrate who has given the order for the attachment; from whose orders an appeal lies of course to the superior criminal courts. So also any resistance to the proceedings of the collector in taking possession of the property would be a resistance of the process of the magistrate and would be punishable by him. C. O. No. 112 of vol. 4. *L. P.*

1728. When a claim is preferred to property attached by a magistrate, either directly or though the collector, he is not required to direct its immediate release from attachment before examining the validity of the claim; but he should never attach without good *prima facie* grounds for believing the property to belong to the absentee. Letter of Nizamut Adawlut to the Judge of Bakirgunj No. 1247, September 3, 1852.

1729. No authority is vested in a collector by law to sell, on account of expenses incurred in their management, shikmee tenures placed under attachment by a magistrate under Reg. XI. 1796. Letter of Nizamut Adawlut to Judge of Bakirgunj, No. 1247, September 3, 1852.

1730. If the offender is a sudder farmer holding a farm from government within the zillah or city in which the resistance has been made, the judgment against him is to declare his lease cancelled; and the magistrate, by a precept under his official seal and signature, is immediately to give notice to the collector, who is to proceed as above.* *Beng. and Ben.*

1731. If the person convicted of resisting or causing to be resisted the process of a magistrate or police officer, is a proprietor of land or a sudder farmer paying revenue to government in any zillah or city jurisdiction, not being that in which the offence has been committed, and it appears just and proper, on due consideration of the circumstances of the case, to extend the penalty of forfeiture, declared in the above provisions, to the whole or any part of such lands or farms, it is competent to the magistrate to adjudge the same, subject to the prescribed confirmation of the nizamut adawlut, and the final orders of the government. Reg. XX. 1817, sect. 26, cl. 3.

1732. The judgments passed by the magistrate under the preceding provisions are to be immediately reported, with a complete copy of the proceedings, to the nizamut adawlut; and are not to be considered final and conclusive, until the orders of that court are received under the following section. *Beng. and Ben. Reg. XI. 1796, sect. 2, cl. 5. Ced. Prov. Reg. III. 1804, sect. 2, cl. 6.*

1733. The nizamut adawlut, on receipt of the proceedings, are to pass such order thereupon as they think proper, on due consideration of the evidence and all the circumstances of the case; and in all instances wherein the forfeiture of the offender's lands or lease appears to

them too severe a punishment for the offence, they are authorized to commute it for such fine to government as they think adequate, and order the attachment of the lands to be taken off on the payment thereof. The sentence of the nizamat adawlut is to be final in all cases of fine, and imprisonment; but in case they confirm the judgment of the magistrate for a forfeiture of the offender's land or lease, they are, previously to ordering such sentence to be carried into execution, to transmit their proceedings with those of the magistrate to government, who are finally to determine whether the sentence of forfeiture is to be put in force, or commuted to fine, or otherwise; and who, whenever they order the land or lease of the offender to be forfeited, are at the same time to cause the necessary instructions for the future disposal of the land to be sent to the collector. In case the magistrate's judgment of forfeiture is set aside, either by the nizamat adawlut or government, he is immediately on being informed thereof, and on receipt of the fine (if a fine is ordered), to issue a precept to the collector, requiring him to remove the attachment, and to cause a full and fair account to be rendered of all receipts and disbursements during the period of attachment. *Beng. and Ben. Reg. XI. 1796, sect. 3. Ced. Prov. Reg. III. 1804, sect. 3.*

The final order of forfeiture must be passed by government.

1734. If the offender is not a proprietor of land or sudder farmer paying revenue to government, as described above, the judgment against him is to declare him liable to the payment of such fine to government as appears proper upon a consideration of his rank and circumstances in life, and the offence of which he is convicted; and the magistrate is immediately to proceed to the attachment of any property appertaining to the offender for the recovery of the same, in the manner authorized by the regulations for the recovery of sums of money decreed by the civil courts. When the offender has been apprehended, and is not possessed of property adequate to the discharge of the fine adjudged against him, the magistrate may commute such fine to imprisonment. *Beng. and Ben. Reg. XI. 1796, sect. 2, cl. 4. Ced. Prov. Reg. III. 1804, sect. 2, cl. 4.*

If the offender be not a landholder or sudder farmer, he is to be punished by fine, recoverable by distraint;

or, in failure of fine, by imprisonment.

1735. In cases of resistance of process not attended with aggravating circumstances, wherein the magistrate judges it sufficient to inflict the punishment which he is authorized to inflict for petty offences under sect. 8, Reg. IX. 1793,* it is not necessary to transmit his proceedings for the consideration of the nizamat adawlut, but his judgment is to be executed without reference under the general rules in force regarding appeals and revision of cases. *Beng. and Ben. Reg. IX. 1801, sect. 5. Ced. Prov. Reg. III. 1804, sect. 2, cl. 5.*

In minor cases the magistrate may, if he thinks it sufficient, pass the same sentence as in other petty offences.

*v. ¶ 703.

1736. But, in all instances of resistance to the process of a magistrate or police officer, wherein the magistrate is of opinion that a fine to government not exceeding 200 rupees, commutable if not paid to imprisonment not exceeding 6 months, is an adequate punishment for the offence, he is authorized to adjudge the same instead of a forfeiture of land or farm; and his judgment in such cases, as well as in all cases wherein a similar judgment is passed by him against persons not being proprietors of land or sudder farmers, is not referrible to the nizamat adawlut, but is final, unless altered or rescinded by the superior criminal courts under the general rules in force. *Reg. XX. 1817, sect. 26, cl. 5.*

But, in all cases the magistrate may, if he thinks it sufficient, pass sentence of fine commutable to imprisonment. And in all cases not including forfeiture of land or farm the judgment of the magistrate is final.

1737. If any person charged with an offence of a criminal nature absconds or conceals himself, so that upon a process issued against him by a magistrate or police officer he cannot

Any person charged with a criminal offence, ab

according or evading process, is to be summoned by proclamation.

* The rules, under which the police officers are to publish such proclamation (v. paras. 1723 and 1724) apply equally here

If he does not appear his land or property within the zillah is to be attached.

Attachment how to be made, if the absentee is a landholder, or sudder farmer;

* See para. 1727.

and, if he is not such, but a tenant of landed property, capable of attachment.

* See para. 1727.

So, if he possesses land or other immovable property in any other zillah.

Attachment to be removed on the attendance of the absentee.

be found, the magistrate is to cause a written proclamation (in the vernacular language) requiring the absent party to appear to answer the charge within a fixed period, not less than one month, to be publicly read and proclaimed by beat of drum; and is to cause such proclamation to be affixed in some conspicuous part of his cutcherry, as well as on the outer door of the house in which the party has usually dwelt, or some conspicuous place in the village in which he has generally resided.* In case the party does not appear and deliver himself up within the fixed period, the magistrate, on receiving the nazir's return to this effect, is to order the attachment of any land or other real property held by the absentee, within his jurisdiction, in the following manner. *Beng. and Ben. Reg. XI. 1796, sect. 4, cl. 1. Ced. Prov. Reg. III. 1804, sect. 4, cl. 1.*

1738. If the absentee is a proprietor of land or sudder farmer paying revenue immediately to government, he is to issue a precept,* under his official seal and signature, to the collector of the district, requiring him to hold the land or farm of the absentee in attachment, till the receipt of further notice. And the collector is accordingly to obey such requisition, and to take such measures as are necessary for the due care and management of the lands while under his charge, subject to the instructions of the commissioner of revenue, to whom he is to make an immediate report of any instances of lands being delivered over to him under these provisions; he is also to relinquish such lands, on being advised by the magistrate that the attachment has been taken off on the attendance of the absentee; and is to cause a full and fair account to be rendered of all receipts and disbursements during the period of attachment. *Beng. and Ben. Reg. XI. 1796, sect. 4, cl. 2. Ced. Prov. Reg. III. 1804, sect. 4, cl. 2.*

1739. If the absentee is not a proprietor or farmer of land paying revenue to government but, as a dependant talookdar, under farmer, or ryot, or in any other capacity whatever, is the tenant of landed property capable of attachment, the magistrate is to issue a precept to the collector of the district,* directing him to attach the same, and adopt the necessary measures for the due care and management of it while under his charge; paying from the product any rent which becomes due to the zumeendar or other person entitled thereto; and deducting all necessary expenses in the account to be rendered to the absentee, whenever he may attend and the attachment of his property is removed. *Beng. and Ben. Reg. XI. 1796, sect. 4, cl. 3. Ced. Prov. Reg. III. 1804, sect. 4, cl. 3.*

1740. If a person charged with an offence of a criminal nature, who absconds or conceals himself, so that the process issued against him cannot be served, possesses land or other immovable property, or a sudder farm paying revenue to government, in any other zillah or city jurisdiction, than that wherein the offence charged against him has been committed, and it appears necessary to attach the same with a view to cause his attendance under the above provisions, it is competent to the magistrate to order the attachment of the whole or any part of such property or farm, and the above provisions are to be considered applicable in such cases. *Reg. XX. 1817, sect. 26, cl. 4.*

1741. In all instances wherein an attachment of property is ordered under the foregoing rules, the magistrate, immediately on the attendance of the party for whose appearance it was

ordered, is to direct, by a written precept, that the attachment be removed, and that a full and fair account be rendered of all receipts and disbursements during the period of attachment. *Beng. and Ben. Reg. XI. 1796, sect. 5. Ced. Prov. Reg. III. 1804, sect. 4, cl. 4.*

1742. If the absentee appears to answer the charge within the six months mentioned above, the magistrate is not authorized to continue the attachment. *Const. No. 414.*

Attachment may not be continued after his appearance.

1743. If the absentee neglects to attend for a period of six months after the lands have been ordered under attachment, the magistrate is to report the case to government, who is to pass such order upon it, and upon the future disposal of the lands, as may be deemed proper. *Beng. and Ben. Reg. XI. 1796, sect. 6. Ced. Prov. Reg. III. 1804, sect. 4, cl. 5.*

If the absentee does not attend within six months, report to be made to government.

1744. If any person amenable to the authority of the magistrates and police officers resists or causes to be resisted any warrant, summons, or other process of any authorized magistrate or police officer, and such person cannot be apprehended; or if any person charged with a criminal offence of a *heinous* nature absconds or conceals himself, so that, on a warrant issued against him at his usual place of residence by the local magistrate or police officer, he cannot be found; and the party so resisting or evading the process is not a proprietor or sudder farmer of land capable of attachment under the above provisions, but is in possession of any movable property, which can be attached, and the removal of which might be expected, if not placed under immediate attachment, the police officer, issuing or serving the warrant in such cases, is authorized on receipt of credible information, that the person against whom the warrant is issued has recently absconded, or concealed himself for the purpose of evading it, to cause the attachment* of any movable property belonging to such person within his jurisdiction, giving at the same time immediate information to the magistrate of the district; whose previous instructions are to be applied for, when there is [no] reason to expect a removal of the property. *Reg. XX. 1817, sect. 26, cl. 6.*

The movable property of persons resisting or evading process may be immediately attached, in case of suspicion of removal.

* For form of writ of attachment in such cases, see appendix A. No. 55.

1745. This provision applies only to criminal offences of a *heinous* nature; and magistrates are to abstain from attaching the personal property of an absconded defendant whenever the offence for which he is summoned is not of that character.(a) *C. O. Government Bengal, No. 3, September 8, 1853.*

Meaning of term, heinous offence.

1746. A riotous assault, when the offence is so limited, and unaccompanied by any aggravating feature of injury or otherwise, so as to make it of a serious nature, is not classifiable as a "heinous offence" under the regulations. *Government Order W. P. No. 627A, May 8, 1854.*

A mere riotous assault is not a heinous offence.

(a) With this order is circulated a letter from the superintendent and remembrancer of legal affairs in which it would seem that he confines the application of the term "heinous" to those offences enumerated in sect. 26, Reg. IX. 1807 and form No. 4, Reg. XX. 1817. But this interpretation is doubtful, since both the regulations quoted refer merely to periodical returns of crimes committed, and many heinous offences are not enumerated therein. The nature of the case must be judged by its peculiar characteristics. A list of heinous offences is given in sect. 21, Act VII. 1854, but it omits affrays and thefts, both of which must be classed as heinous offences. The following section however includes under that term any offence which in the judgment of government is serious or aggravated.

An affray may or may not be a heinous offence.

1747. "Actual affray," without specification of its nature, is designated among heinous offences by cl. 1, sect. 13, Reg. XX. 1817; but the nature of the affray must be gathered from the subsequent provisions made regarding that offence and serious riots in section 18 of the same enactment. This is conformable to the classification of offences in the magistrate's criminal statements. Government Order *W. P.* No. 627A, May 8, 1854.

Property so attached is not to be removed, until the orders of the magistrate are received.

1748. The magistrate, on receipt of the information directed in the above clause, is to determine whether the case is such as to require a continuance of the attachment, till the appearance of the accused person, or till a proclamation has been issued for his attendance under the above provisions; and is to transmit instructions to the police darogah accordingly, either for the release of the property attached by him, or for continuing the attachment, and taking an inventory of the property in conformity with the following clause. Till the receipt of such instructions the police officers are to adopt such measures only as are requisite to prevent a removal of the attached property. Reg. XX. 1817, sect. 26, cl. 7.

Inventory to be taken of articles attached, and acknowledgment from parties receiving charge.

1749. On receipt of the magistrate's instructions for an attachment of moveable property, the darogah, in the presence of two or more respectable inhabitants of the place, is to cause an exact inventory of the articles attached to be taken and duly attested; after which he is to deliver the property in charge to the headman or any two or more respectable inhabitants of the place, taking an acknowledgment for the same, which is to be forwarded, together with an inventory of the property, to the magistrate. Reg. XX. 1817, sect. 26, cl. 8.

Such property is to be carefully preserved, and a strict account rendered on the removal of attachment.

1750. In all instances, where an attachment of property is made under the foregoing rule, the darogahs are to enjoin the persons, into whose charge the same is delivered, to take care that there is no injury done to the property; and if the person charged appears, within the period specified in the proclamation, the magistrate is immediately on the attendance of the party, to cause the attachment to be removed, and a full account rendered of the property attached, subject only to any unavoidable expense which has attended the attachment. Reg. XX. 1817, sect. 26, cl. 9.

Disposal of property in the event of the proclaimed person not appearing, in a case of resistance, and in a case of evasion of process.

1751. If the proclaimed person does not appear within the period fixed by the proclamation, the attached property in cases of resistance of process is liable to public sale, by order of the magistrate, for the purpose of making good any fine imposed on the offender; or, should the attachment of movable property have taken place under an evasion of process, it is at the end of six months, supposing the absentee not to attend during that period, to be at the disposal of government, in common with any landed property attached under similar circumstances in pursuance of the regulations in force. Reg. XX. 1817, sect. 26, cl. 10.

Form of report to government.

1752. Whenever a magistrate has occasion to report to government cases of evasion of criminal process, with a view to the sale of the property of the accused person, in accordance with the provisions of sect. 6, Reg. XI. 1796, and sect. 26, Reg. XX. 1817, he is to make his report in the subjoined form, without a transmitting letter, unless the case be of sufficient importance to require more detailed notice:

Statement of a defendant evading criminal process, and reported to government, under sect. 6, Reg. XI. 1796, and sect. 26, Reg. XX. 1817.

Name, occupation, and condition of life of absconded defendant.	Brief statement of the offence charged, and the circumstances connected with it.	Description of property attached.	Estimated value of property attached.	Date of attachment and proclamation, and other steps taken to secure attendance.

C. O. Government Bengal, No. 3, September 8, 1853.

1753. Commissioners in the Western Provinces are to submit for each quarter, in one quarterly statement for all the districts in their division, all applications received from magistrates for the sale of the movable property of criminals who have evaded process. Govt. Order *W. P.* No. 1407A, August 8, 1854.

Commissioners *W. P.* are to report such cases quarterly.

1754. The above provisions are applicable only to persons *charged* with a crime, but not convicted. Thus, the property of a person, who absconded after sentence and pending appeal, was held not liable to forfeiture. Const. No. 1124.

The above provisions are not applicable to persons absconding after conviction.

1755. Persons apprehended on a charge of resistance of process under the above provisions, and who are not accused of any aggravating crime, in addition to the resistance of process, such as is declared not bailable by sect. 7, Reg. IX. 1793, or sect. 4, Reg. XVI. 1795,* are to be admitted to bail until a final decision has been passed upon the charge; provided the bail offered by them appears to the magistrate, or other public officer to whom the charge is preferred, sufficient for securing their appearance during the prescribed investigation of the case. *Beng.* and *Ben. Reg.* IX. 1801, sect. 4. *Ced. Prov. Reg.* III. 1804, sect. 5.

Bail is admissible in cases of resistance of process.

* *v. paras* : 1625 and 1626.

1756. A person on whom a summons has been issued to answer a charge of resistance of process, is at liberty to answer such charge through a vakeel without being obliged to appear in person,—as the object of a summons in such case is to give the summoned party an opportunity of defending himself against the charge, which is distinct from ordering his apprehension after conviction, in consequence of non-payment of fine, with a view to his imprisonment. Const. No. 1216.

Persons charged with resistance may appear by vakeel.

1757. When a process issued by a court of one zillah, and backed and aided by the court of another zillah, is resisted, it is considered as the resistance of the process of the court within whose jurisdiction it took place. Const. No. 1115.

Resistance of process of one court aided by another.

1758. Cases of resistance of process should not be punished as affrays, since that offence has its appropriate penalty. Const. No. 549.

Resistance is not punishable as an affray.

1759. As the course of procedure against persons evading the process of a criminal court is distinctly laid down in the above provisions, the magistrate's views of expediency

Evasion cannot be punished as contempt of court.

cannot justify his deviating from that course, and punishing persons guilty of that offence as for a contempt of court. Const. No. 619.

Nor can a case of simple resistance be committed to the sessions.

1560. A charge of resistance of process is not a fit subject of commitment to the sessions court: the magistrate must proceed according to the above provisions. N. A. R. vol. 2, page 225.

Resistance of police is not justified by their neglect of the forms of law.

1761. Forcible resistance of the police is not justified by a disregard on the part of the darogah of the rules of sect. 27, Reg. XX. 1817 for assisting in cases of distraint. Reports L. P. 1855, part 1, page 754.

Precedents of cases.

1762. Three prisoners were convicted of murder in assaulting and opposing a military party employed on the public service; and sentenced, the ringleader to suffer death, and the others as accomplices to imprisonment in transportation for life. N. A. R. vol. 1, page 56.

1763. A havildar and two sepoy, charged with rescuing two persons from the custody of the police and magistrate's officers, and acquitted—the havildar, because he acted under instructions from a person whom he deemed himself bound to obey; and the sepoy, because they acted in obedience to the orders of the havildar, their immediate superior officer. N. A. R. vol. 2, page 330.

Register to be kept up of persons absconded.

1764. The magistrate is to keep up and regularly revise, according to the form given in No. 2 of appendix B, a vernacular register of persons charged with or suspected of the commission of specific crimes of a heinous nature, who have eluded the pursuit of justice. A copy of this register is to be forwarded half yearly to the superintendent of police. Reg. III. 1812, sect. 9, cl. 1 and 2. C. O. No. 144 of vol. 3, para. 6.

Police officers are to assist persons required to produce offenders; and to take charge of them if required.

* See chapter "Of landholders" in Book 2.

1765. If any zumeendar, farmer, local manager, or other person, to whom a magistrate has issued a warrant or order, in pursuance of Reg. III. 1812,* or any other regulation in force, for the apprehension of a person proclaimed or charged with or suspected of a crime, applies to a police officer for co-operation and support in the execution of it, the police officer is to afford every assistance in his power for the due enforcement of the process; and, if required so to do, in conformity with cl. 6, sect. 9, Reg. III. 1812, is to receive charge of the prisoner from the zumeendar, or other person, and is to grant a written acknowledgment, specifying the name of the prisoner and the date on which he was delivered into his charge; he is also without delay to forward the prisoner under safe custody to the magistrate. If the person named in the application made to the police officer is not apprehended, the particulars of the application and of the measures taken in consequence are to be recorded, for the information of the magistrate, in the thana diary prescribed by sect. 8 of this regulation. Reg. XX. 1817, sect. 26, cl. 13.

Police officers, wounding or killing offenders, are to be held guiltless.

1766. If a police officer entrusted with or assisting in the execution of any legal warrant for the apprehension of a person charged with murder, robbery, or other heinous crime, or pursuing a robber or murderer immediately after the commission of the crime, or resisting him in his attempt to perpetrate the crime, should wound or slay any offender in endeavouring to apprehend him, he is to be held guiltless of any criminal act. Reg. XX. 1817, sect. 26, cl. 14.

1767. A civil judge should himself dispose of all common cases of resistance of civil process; and make over to the magistrate those cases only, which have been attended with acts of violence amounting to a breach of the peace, simply sending the papers, without passing any opinion thereon, and requesting him to dispose of the case under the general regulations. In such case the appeal would lie, from the order of the magistrate, to the judge in his capacity of session judge. Const. Nos. 1033 and 1115.

Of civil court.

Judge to make over those cases only which are attended with a breach of the peace.

1768. Resistance offered by a farmer to persons legally authorized to distrain his effects is a criminal act, and punishable by imprisonment, notwithstanding that the distress is levied in an irregular manner, as the farmer always has it in his power to gain redress by an application to a court of justice. In this case, the ringleader was sentenced to imprisonment for one year, and the others for six months. N. A. R. vol. 1, page 302.

Resistance to a process of distraint, illegally executed, is a criminal act.

1769. Certain prisoners convicted of being concerned in an affray, attended with slight wounding, in resistance to a fraudulent distraint, a burkundaz being present to keep the peace, were sentenced under all the circumstances of the case to six months' imprisonment, and a fine of 15 rupees in lieu of labor. N. A. R. vol. 6, page 49.

Case of resistance to fraudulent distraint.

1770. In the event of a legal arrest by a warrant issued from the civil court, and a forcible rescue from the custody of its officers, the magistrate is not empowered to order the police forcibly to enter the house wherein the person rescued is, and to apprehend and forward him to the civil court: in such case the civil court should proceed against the offender according to sect. 25, Reg. IV. 1793. Const. No. 765.

Magistrate cannot order police to break open a house to search for a person rescued from civil process.

1771. It is not competent to a civil judge in cases of resistance of the process of his court to call upon the magistrate to enforce his orders. Const. No. 1209.

Nor can judge require aid from magistrate.

1772. All police officers are to aid and support the execution of all process and orders issued by a collector or other officer exercising the powers of collector, engaged in making or revising a settlement, on the responsibility of the officer issuing or executing the same; and if any affray or breach of the peace occurs in consequence of any resistance or obstruction being made or attempted to be made to the legal process or order of a collector or other revenue officer, the parties resisting or obstructing such process or order are to be punishable for the affray or breach of the peace, and the revenue officers are not to be liable to any criminal prosecution on that account. Reg. VII. 1822, sect. 24, cl. 3.

Of collector.

Police officers are to aid and support execution of process; and revenue officers are to be held guiltless if affray ensues.

1773. Under the above provision, a collector, or officer exercising the powers of collector, has no authority to issue any orders direct to the police officers to aid in the execution of his process, except in very emergent cases, which should also be immediately reported to the magistrate; but in ordinary cases, whenever the collector has reason to apprehend resistance of his process, he is to communicate his apprehensions to the police darogah, who is responsible for taking such precautionary measures as are in his opinion necessary to prevent a breach of the peace. Const. No. 1018.

But collector cannot issue orders to police officers; he is only to warn them of his apprehension of resistance.

1774. It was held illegal in a thanadar to issue process on the mere requisition of an ameen, who reported by letter that certain persons were ripe for rebellion. N. A. R. vol. 2, page 225.

Police cannot issue process on the mere requisition of an ameen.

Cases of resistance are cognizable by magistrate only when a breach of the peace occurs.

1775. Under the powers vested in them by Reg. VIII. 1831, collectors are competent to try all cases of resistance of their process of attachment connected with summary suits for rent, except where actual breaches of the peace occur, in which event the case must be tried by the magistrate. Const. No. 615.

SECTION XI.

OF REWARDS.

For the apprehension of offenders.

Applications to be made to officer appointed by government ;

who is the commissioner ;—but the magistrate may offer rewards up to 500 rupees.

Session judge cannot offer.

Particulars to be noted and forwarded with such application.

Officers not to exceed their powers.

Rewards are payable by the magistrate of the jurisdiction in which the offender is apprehended.

Payment to be made at once, and reported.

1776. All applications for permission to offer a reward for the apprehension of a known offender, or the discovery of unknown offenders in cases of magnitude, are to be made to such officer or officers as from time to time are empowered by the local governments to authorize the grant of rewards. Act XVI. 1843.

1777. Commissioners of circuit are authorized, under the above rule, to sanction rewards for such objects to the extent of 500 rupees. The magistrate may exercise his discretion in offering rewards up to that amount; but he is to report them immediately to the commissioner, who may ratify, amend, or annul such orders as he thinks fit. C. O. Sup. Pol. *L. P.* No. 24 of 1843. Govt. Order *W. P.* No. 1415A, August 10, 1854.

1778. A session judge has no power to direct the offer of a reward for the apprehension of an offender who has absconded. Reports *W. P.* 1856, part 1, page 243.

1779. In submitting such applications, magistrates are to forward copies of their proceedings, or such parts of them as are sufficient to show the grounds and evidence on which the person, for whose apprehension a reward is proposed, is considered to have been concerned in the commission of the offence. He is also to forward a descriptive roll containing the name of the person and of his father; his age; places of birth and residence; and a description of his person, as far as it can be obtained, particularly noticing any peculiarities of dialect, speech, gait, or vision. C. O. No. 147 of vol. 1. C. O. Sup. Pol. *L. P.* No. 2 of 1842.

1780. All officers are to be careful not to exceed the power vested in them as regards the offer of rewards for apprehension. C. O. No. 173 of vol. 2. *W. P.*

1781. All rewards for the apprehension of proclaimed offenders, which are sanctioned by the regulations, and promulgated under the seal and signature of a magistrate, or of the superintendent of police, are, if the offender be seized by officers of police or by other persons, to be payable on the delivery of the person proclaimed to the magistrate of the zillah in which the offender has been seized. Reg. XX. 1817, sect. 26, cl. 15.

1782. Rewards, after they have been sanctioned, are to be paid without delay, and without further reference to the superintendent of police; but the payment is to be notified, whether the reward was offered on the authority of the magistrate or of the superintendent of police. C. O. Sup. Pol. *L. P.* Nos. 3 and 5 of 1842.

1783. A half-yearly statement of rewards and contingent charges disbursed under the sanction of the superintendent of police is to be furnished by the magistrates in the form, No. 9 of appendix F. C. O. Sup. Pol. *L. P.* No. 6 of 1842. This statement is to be despatched within one month from the close of the previous half-year. All sums that may have been expended during the half-year, although previously sanctioned by the superintendent of police, are to be entered in the statement. No sums that have been sanctioned by government are to be entered : nor are sums of expenditure from the surplus ferry, or chokeedaree, funds to be included in it. C. O. Sup. Pol. *L. P.* No. 3 of 1848.

Half-yearly statement.

to be forwarded within a month; and to contain all sums disbursed by order of commissioner.

1784. In cases wherein any meritorious service has been rendered by police officers or others in the apprehension or discovery of public offenders for whom no specific reward is payable to such persons, the session judge^(a) on due consideration of the service rendered, the exertions made, and any expense incurred, in the performance of it, is authorized to direct the payment of such remuneration as is considered adequate, not exceeding the sum of 100 rupees for a sirdar, and 10 rupees for an accomplice. If a larger reward is deemed proper, a report of the case is to be made to the nizamut adawlut, who are authorized to direct the payment of any sum not exceeding 500 rupees : if in any case it appears proper to grant a higher reward or compensation than 500 rupees, the nizamut adawlut is to report the same for the consideration and orders of government. Reg. XVI. 1810, sect. 18.

For meritorious service.

Authority of session judge to grant rewards for meritorious services in the apprehension or discovery of offenders, and of the nizamut adawlut.

1785. The above provision is applicable to any meritorious service rendered in the discovery and apprehension of persons really notorious as robbers ; but is not to be considered applicable to persons coming under the vague description of "vagrants." C. O. No. 80 of vol. 1, para. 13.

The above is not applicable to vagrants.

1786. When a magistrate is of opinion that it is expedient to grant any reward to a police officer or other person for particularly meritorious conduct, or for any services rendered to the police, he is to state the circumstances with his sentiments to the superintendent of police, who may, if he deems it expedient, sanction such reward ; provided that the sanction of government is previously obtained, if the proposed sum exceeds 100 rupees. But this rule is not to be construed to preclude the courts of sessions and nizamut adawlut from the exercise of the powers vested in them by the above provisions, whenever, from any circumstances which appear in the progress of a trial, they consider it expedient to direct or recommend the payment of any reward. Reg. XVII. 1816, sect. 15.

Magistrate how to proceed when he considers any person deserving of reward for meritorious conduct ; and power of superintendent of police.

1787. The inspector of prisons in the Western Provinces is authorized to sanction rewards not exceeding Rs. 100 in each case to guards and other public officers for good conduct on the occurrence of breaches of jail discipline. Applications for the offer of larger rewards must be submitted for the sanction of government through the inspector of prisons with a detail of the circumstances. All applications for the offer of such rewards

Power of inspector of prisons to grant rewards.

(a) The original refers of course to courts of circuit ; but the same power has devolved successively on the commissioner of circuit, and the session judge. See para. 731. The text has been altered throughout accordingly ; but it is prominently noted in this place, because it was thought necessary to explain in a circular order the power of a session judge to grant rewards under the above provisions. See C. O. No. 121 of vol. 2, dated October 5, 1832.

should be forwarded by the magistrate to the inspector of prisons who will dispose of them according to the above instructions. Government Order *W. P.* No. 5481, November 13, 1848.

Economy inculcated.

1788. Magistrates are to regard economy in recommending rewards for meritorious conduct; and in any particular case a report should be previously made to the superintendent of police. *C. O. Sup. Pol. L. P.* No. 13 of 1842.

Police officers are entitled to no commission on recovery of stolen property.

1789. Darogahs and other police officers are not entitled to a commission on the value of stolen or plundered property which they may recover. Act XXXI. 1852.

CHAPTER V.

OF APPEALS.

SECTION I.

OF APPEALS AND REVISION OF SENTENCES.

To whom appeals lie.

From assistants not vested with special powers to magistrate within one month;

from magistrate and officers vested with special powers to session judge within one month;

from session judge to nizamat adawlut within three months.

1790. From every sentence or order in criminal trials within the limitation prescribed by sections 8 and 9, Reg. IX. 1793 (*Ced. Prov.* sections 8 and 9, Reg. VI. 1803)(*a*) or in judicial proceedings other than criminal trials, passed by an assistant to a magistrate, or by a sudder ameen, or by a law officer, or by any other officer under a magistrate empowered to try criminal cases, there is permitted one appeal to the magistrate, joint magistrate, or officer exercising the powers of magistrate, within one month from the date of such sentence or order.—And from every sentence or order in criminal trials beyond such limitation(*a*), or in judicial proceedings other than criminal trials, passed by a magistrate, joint magistrate, assistant to a magistrate or other officer empowered to try criminal cases, vested with special powers, there is permitted within one month as aforesaid one appeal to the session judge.—And from every sentence or order passed in criminal trials by a session judge there is permitted within

(*a*) The limitations are: in *petty offences*, imprisonment for 15 days, or a fine of 50 rupees, unless the offender is a zumeendar, independent talookdar, or other actual proprietor of land paying an annual rent to government of more than 10,000 rupees; or a proprietor of ayma land paying a quit-rent to government exceeding 500 rupees per annum; or of lakhiraj land the annual produce of which is above 1,000 rupees; in which cases the fine may be 200 rupees:—in *petty thefts*, imprisonment for one month.

three months one appeal to the nizamat adawlut.—And except as provided in the next section of this Act the sentences or orders passed upon such appeals are final. Act XXXI. 1841, sect. 2.

Such appeals are final.

1791. Every order of an assistant to a magistrate or other officer not vested with special powers, passed in a criminal trial or proceeding, awarding a higher punishment than that prescribed by the limitations above mentioned (*i. e.*, adjudging a penalty of fine and imprisonment agreeable to the provisions of sect. 20, Reg. IX. 1807,* or cl. 3, sect. 3, Reg. III. 1821†) is appealable to the session judge. C. O. Nos. 156 *L. P.* and 159 *W. P.* of vol. 3.

EXPLANATIONS.

If order of officer not vested with special powers is beyond the limitations.

* v. ¶ 760.

† v. ¶ 815.

1792. Every sentence or order of an assistant or other officer vested with special powers, passed in a criminal trial or judicial proceeding, awarding a punishment within the limitations noted above, is appealable to the magistrate, joint magistrate, or officer exercising the powers of a magistrate. C. O. No. 210 of vol. 3.

If order of officer vested with special powers is within the limitation.

1793. The law allows no appeal to the session judge from the sentence of a magistrate, joint magistrate, [or other officer exercising the full powers of a magistrate] awarding a punishment within the limitations prescribed above. C. O. No. 100 of vol. 3.

If order of officer exercising full powers of magistrate is within the limitations.

1794. The magistrate is the authority to determine the character of the offence, and the measure of punishment deemed commensurate thereto; and consequently no appeal lies to the session judge when the magistrate treats a case as a petty offence, and passes sentence within the prescribed limitations, although a much more severe penalty might be inflicted under the regulations. Const. No. 1353.

If rests with the magistrate to determine what offences should be punished within the limitations.

1795. The order of a magistrate inflicting a fine not exceeding 200 rupees, under the express condition specified in sect. 8, Reg. IX. 1793,* is not appealable; but it is incumbent on the magistrate, in passing an order for a fine of above 50 rupees under that enactment, to set forth that the person fined is in the condition mentioned; and, in the absence of any such declaration on the part of the magistrate, any order of his directing the payment of a fine above 50 rupees is *prima facie* appealable. Const. No. 1361.

If the magistrate fines a person more than 50 rupees within the limitation, he is to declare the condition which makes it such.

* See note (a) in preceding page.

1796. The award of a fine under Act XVI. 1850 for the restitution of stolen or plundered property, being under the terms of the Act an additional punishment for the same offence, cannot be considered as a separate order from the sentence of fine or imprisonment. If therefore the two fines aggregate more than 50 rupees, the order must be considered to be beyond the limitation. Reports *L. P.* 1852 part 1, page 283.

Fine under Act XVI. 1850 is not a separate order.

1797. All appeals from a joint magistrate, of whatever powers (whether dependant or independant), are appealable exclusively to the session judge. Const. No. 858 is therefore rescinded. Const. No. 1326.

From all joint magistrates the appeal lies to the session judge.

1798. It is not competent to a session judge to interfere with any order passed by a magistrate, or joint magistrate, regarding the appointment, suspension, or removal of any ministerial or police officer, the revision of which has, by section 4 of this Act, been entrusted to the superintendent of police. Act XXIV. 1837, sect. 5.

Judge cannot receive appeals from police or ministerial officers.

In matters regarding the administration of police.

1799. An order passed by a magistrate to prevent persons going about at night after a fixed hour, is appealable to the session judge. Const. No. 1239. The appeal from an illegal order of a magistrate, requiring a zumeendar to provide a building for the residence of police officers stationed upon his estate, lies to the session judge. Const. No. 1247. [These constructions were ruled under the provisions of sect. 5, Act XXIV. 1837, which (by another construction, No. 1145) was declared to be in force in those districts in which the whole administration of criminal justice had been transferred under Act VII. 1835 from the commissioners to the session judge, whether a superintendent of police had been appointed or not. Under that section (as now under Act XXXI. 1841) all appeals from the orders passed by a magistrate in any judicial proceeding whatever were made cognizable by the session judge instead of the commissioner of circuit; and it is expressly enacted (by sect. 7) that nothing in Act XXXI. 1841, is to be held to alter or interfere with the powers and duties of a superintendent of police as laid down in Act XXIV. 1837, and other parts of the Bengal Code. So, it was ruled in Const. No. 1307, that appeals from the orders of a magistrate enforcing penalties, under cl. 5, sect. 10, Reg. XX. 1817, against landholders for not keeping up dâk establishments, lie to the session judge, and not to the superintendent of police. And so, it has been ruled more lately, since the enactment of Act XXXI. 1841, in C. O. No. 157 of vol. 3, that all orders passed by magistrates for the removal of obstructions and nuisances on thoroughfares, or for other conservancy purposes, under the provisions of Act XXI. 1841, are appealable to the session judges only. In fine, therefore, all orders passed by a magistrate in judicial proceedings (other than criminal trials) whether connected with matters of police, or otherwise, are appealable to the session judge, with certain exceptions; viz. it is not competent to a session judge to interfere with any order passed by a magistrate regarding the appointment, suspension, or removal of any ministerial or police officer, the revision of which is entrusted to the superintendent of police (see sect. 5, Act XXIV. 1837): and so, as the magistrate's acts in the management of ferries are subject to the control of the superintendent of police, it is not competent to a session judge to receive appeals in such matters. (Const. No. 1144).]

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in a criminal trial; and cannot revise orders of superintendent of police.

1800. The decision of a session judge in appeal from the order of a magistrate, or joint magistrate, in any judicial proceeding other than a criminal trial; and also the orders of the superintendents of police in regard to the appointment, suspension, or removal of a ministerial or police officer of a magistrate, or joint magistrate, passed under the provisions of this Act respectively; are not open to revision by the nizamut adawlut. Act XXIV. 1837, sect. 6.

1801. The decision of the session judge in appeal from the order of a subordinate criminal court in any judicial proceeding other than a criminal trial is not open to revision by the nizamut adawlut; and in regard to such cases that court possesses no jurisdiction. The provisions of sect. 6, Act XXIV. 1837 are specific and imperative, and bar the interposition of the court; and sections 2 and 3, Act XXXI. 1841 are clearly declaratory of the finality of the session judge's orders in all judicial proceedings other than criminal trials. Such being the case the court cannot assume to itself jurisdiction on the ground that the

orders passed by a session judge are unwarranted or irregular.(a) Reports *L. P.* 1851, page 1453.

1802. The nizamut adawlut cannot interfere with the order of any subordinate criminal court, which does not regard a criminal trial. Reports *L. P.* 1852, part 1, page 679.

1803. In any jurisdiction, in which a superintendent of police has not been appointed under Act XXIV. 1837, cases of a miscellaneous nature, other than criminal trials, are not cognizable by the nizamut adawlut. In such miscellaneous cases an appeal lies from the magistrate to the commissioner of circuit in his capacity of superintendent of police, whose decisions are not open to revision otherwise than on a regular suit in a civil court. Provided, however, that this is not held to preclude the government from issuing any orders that they may see fit, consistently with the existing regulations, in any case that may be brought to their notice by the nizamut adawlut or otherwise. Reg. IX. 1831, sect. 3. Act XXIV. 1837, sect. 3.

In a jurisdiction to which a superintendent of police has not been appointed, the court cannot take cognizance of miscellaneous cases.

Government may pass any orders in any case.

1804. The interference of the nizamut adawlut in such jurisdiction is restricted by the above to "criminal trials," i. e., cases involving a judicial investigation on a criminal charge and a judicial award. In all other cases which are contradistinguished as "miscellaneous cases," the appellate authority is transferred to the commissioner of circuit, with a reservation of a further appeal to the government in those cases, in which the party deeming himself aggrieved may prefer that course, instead of resorting immediately to the civil courts, [as in cases of dispossession or other actionable cause], or in which the nature of the case will not admit of the remedy by civil action [as in the case of alleged injustice towards native officers of government by magistrates or others to whom they are subordinate]. For the former the ordinary remedy by suit is provided; for the latter an appeal to government. Const. Nos. 914 and 662.

Definition of criminal trials and miscellaneous cases in the above.

1805. The appeal from the order of one magistrate, attaching lands in his district on the requisition of another magistrate, lies to the session judge to whom the former is subordinate. Const. No. 625.

Jurisdiction.

1806. Under orders of government, deputy magistrates, as well as uncovenanted judges exercising magisterial powers, are not to exercise appellate authority; and petitions of appeal whether from covenanted or uncovenanted subordinates are not to be referred to them for decision. C. O. No. 22 of vol. 4, *L. P.*

Appeals do not lie, and are not to be referred for decision, to deputy magistrates or uncovenanted judges.

1807. As every convicted offender has, under the above enactment, the privilege of demanding a re-hearing of his case, or in other words a second trial, so the mere reception of a petition cannot be considered equivalent to the "appeal permitted" by the Act; but it is incumbent on the appellate authorities to call for, and examine the proceedings of the lower courts in every case, whether it be a criminal trial, or a judicial proceeding other than a criminal trial, from the sentence or final order in which an appeal is preferred to them. C. O. No. 165 of vol. 3, *W. P.*

General rules.

Appeal cannot be decided without calling for and examining the proceedings.

(a) In this case the power of the court under the appeal law is fully argued.

Must be preferred within one month.

1808. Under the above provisions appeals are not admissible unless preferred within one month from the date of sentence or order : in this respect the law leaves no discretion. Const. No. 1332.

Rule for calculating the period.

1809. The month, within which the appeal must be lodged, is to be reckoned, exclusive of the day on which the order was passed, according to the English calendar, that is to say, it should not be invariably reckoned at 30 days. C. O. No. 158 of vol. 3.

Copy of order not requisite in nizamut appeals.

1810. In calculating the period of appeals, the time during which stamped paper remains in the lower court for the purpose of procuring a copy of its decision is not deducted. A nizamut appeal can be presented without copy of the decision of the lower court. Reports *L. P.* 1852, part 2, page 493.

Petitions forwarded by dāk need not be attended to.

1811. Although a session judge is at liberty to call for the proceedings of a magistrate in any case, from whatever source his information has been derived, whenever such measure appears to him necessary for the ends of justice, yet a party is not entitled to have his petition of appeal attended to unless presented by himself in person, or by his representative duly authorized. Const. No. 513.

Appeal cannot be heard as of right if beyond time.

1812. The nizamut adawlut will not receive petitions of appeal forwarded by dawk ; and will not entertain the appeal unless the petition be presented within 3 months from the date of sentence. Reports *L. P.* 1852, part 1, page 840.

But petitions of appeal are to be received by officers against their own orders for transmission to the appellate authorities.

1813. Magisterial authorities, and particularly those of out-stations, are to receive petitions of appeal against their sentences and orders for transmission to the session judge, if presented within the period of appeal ; and session judges are to pass orders on such petitions, notwithstanding the appellant has not entered appearance by himself or through an accredited mokhtar at the court. C. O. No. 137 of vol. 3, *L. P.* No. 104 of vol. 4, *W. P.*

Judge what to note in margin of letter transmitting such appeals.

1814. The same rule is applicable to petitions of appeal from the sentences and orders of the session judges, presented to them for transmission to the nizamut adawlut, provided the petitions be duly presented within the prescribed period of three months ; and in such case the judge is to transmit the records of commitment and trial in original without taking copies of them. In the margins of letters transmitting the proceedings are to be entered the dates of the sentences appealed from and of presentation of the petitions ; the names of all the prisoners in the case, from the sentence in which one or more prisoners may have appealed, distinguishing those who have appealed from the others ; and also a copy of the sentence as entered in col. 12 of statement No. 6. C. O. Nos. 137 and 172 of vol. 3, *L. P.* No. 26 of vol. 4. *L. P.* No. 13, January 12, 1855, *L. P.*

This does not refer to miscellaneous appeals.

1815. These rules refer exclusively, as regards session judges to petitions of appeal from sentences on trials held at the sessions, and not to miscellaneous appeals. Letter of N. A. to Judge of Jessore, No. 1074, September 21, 1848.

Transmission of the record of an appeal case is on no account to be delayed.

1816. When a judge detained the record of a case in which an appeal was presented on account of the commitment and trial of another party for the same offence,—the court held that the transmission of an appealed record ought on no account to be delayed ; copies may be made of any papers necessary for a second trial, or that trial may for a time be postponed. A

prisoner under sentence is entitled to the earliest possible hearing of his appeal. Reports *L. P.* 1863, part 1, page 882.

1817. During the absence of the session judge of Nuddea from his station on circuit duty, the nizamut adawlut, on petition, directed the magistrate to stay execution of his award, passed under Act IV. 1840, until the return of the session judge should enable the petitioner to prefer his appeal as allowed by law. *Sevestre's Reports*, vol. 2, page 153.

In a particular case, the nizamut adawlut received an appeal from an order of a magistrate.

1818. It is not required by any law that an appeal from the order of a magistrate should be accompanied by a copy of the proceeding or decision appealed from. Const. No. 1081.

Petition of appeal need not be accompanied by a copy of order.

1819. It is not incumbent on the appellate authorities to furnish the lower courts with copies of the petitions of appeal presented against their proceedings; and on some occasions substantial reasons may exist for withholding them. *N. A. R.* vol. 2, page 221.

Appellate authorities need not furnish the lower courts with copies of petitions of appeal.

1820. The words "sentence or order" in Act XXXI. 1841 do not refer to interlocutory orders in cases under trial; and the provisions of the Act do not preclude the interference of the higher with such intermediate orders of the lower courts. Const. No. 1322.

Interlocutory orders.

1821. Session judges are competent to exercise interference in regular criminal trials in the course of their investigation before the lower courts, and to take cognizance of appeals from interlocutory orders passed by those courts in such cases, not having reference to matters of police: and it is absolutely necessary that they should have such authority to enable them to maintain an efficient superintendence and control over the whole of the proceedings of the lower courts in regular criminal trials. *C. O.* No. 226 of vol. 2.

General power of session judge to interfere in the course of trial by magistrate and to take up appeals from interlocutory orders.

1822. As a magistrate's order in cases of trespass, or the like, may include the infliction of a fine of 50 rupees, not appealable under the above provisions, as well as an award of possession of the thing in dispute, which is appealable to the superior court; distinct and separate orders are to be passed in such cases, that in which the magistrate's decision is final being kept apart from any order appealable to the sessions court. *C. O.* No. 135 of vol. 3. But the former order does not become appealable from being coupled with the latter in one proceeding. Reports *L. P.* 1855, part 1, page 641.

Two orders in one case, one appealable, the other not, are to be kept distinct and separate.

1823. Supposing a party to appeal, the amount of whose punishment clearly gives him that right, the session judge cannot interfere with another sentence in the same case, which falls within the limitations prescribed. And if a party, having an undoubted right to appeal, fails or neglects to do so, another party in the same case, whose punishment falls within the limitations specified, cannot be permitted to appeal. Const. No. 1330.

In such case the judge, though he annuls the former, cannot interfere with the latter.

Persons sentenced under the latter cannot interfere with the former.

1824. It is a rule of practice with the court of nizamut adawlut in the Western provinces, not to receive petitions from third parties, calling themselves relations of the prisoners, without authority from the real appellants. No appeal therefore is considered admissible, unless presented by the appellant in person, or by a duly authorized representative. *C. O.* No. 166 of vol. 3. *W. P.*

The Western court will not receive petitions of appeal from third parties.

1825. The magistrate may compel the personal appearance of a defendant to receive sentence on conviction although he has permitted such defendant to appear by mokhtar during the trial. In such case the defendant cannot appeal from the conviction as long as he

The right of appeal is barred during evasion of process.

Judge may quash conviction, and order commitment,

1826. A session judge in appeal is competent to quash any conviction by a magistrate in a case beyond his legal jurisdiction, and to point out that commitment is, in respect to it, the proper course of procedure. Reports *L. P.* 1852, part 2, page 793.

if the case be beyond the competency of the magistrate ;

1827. The session judge cannot quash a conviction, and direct the commitment of the prisoners, in a case which lies within the competency of a magistrate, and in which therefore commitment is not imperative ;—Letter of Nizamut Adawlut to Judge of Rajshahye, No. 641, June 11, 1843. Reports *L. P.* 1856, part 1, page 873.—even though he would direct commitment on a different charge. Reports *W. P.* 1854, part 1, page 542.

and may order re-apprehension and commitment in case beyond competency of magistrate

1828. A session judge can direct the re-apprehension and commitment of a person, whom the magistrate has released from the charge ;—Reports *W. P.* 1855, part 1, page 623 ;—if the magistrate is not competent to decide the case of his own authority. See para. 971.

If judge quashes the order of a magistrate, and directs him to pass a fresh order, the magistrate cannot disregard the opinion of the judge, but may refer to the sudder court.

1829. When the session judge in appeal from the order of the magistrate quashed a conviction of theft on the ground that the facts of the case did not show that the offence of theft had been committed, and directed the magistrate to pass proper orders ; and the magistrate on a re-perusal of the papers upheld his former order ; the court held that it was not competent to the magistrate to disregard the legal opinion of his superior officer, and to punish the prisoners, in reference to the same admitted facts, upon his own opinion that the offence was properly to be considered as theft. The magistrate, if differing from the session judge on the point of law, ought to have acted according to the provisions of Reg. X. 1796, and to have requested a reference to the sudder court in the manner there laid down. Reports *L. P.* 1853, part 1, page 728.

Judge may order magistrate to admit a prisoner to bail pending appeal ;

1830. A session judge is at all times competent to direct a magistrate to suspend execution of his order, and to admit a prisoner to bail until a final order has been passed in the case, when justice appears to require the measure, whether he has or has not examined the proceedings on which the order is founded. Const. Nos. 489, and 657.

but such practice is highly objectionable.

1831. But the practice of placing convicts on security pending appeal, is most objectionable, and should not be adopted except on *prima facie* evidence of their innocence, and even then but rarely. Resolution Nizamut Adawlut *L. P.* No. 710, July 13, 1850.

Judge may admit a party to plead by vakil,

1832. A session judge may direct a magistrate to admit a party to appear and answer by attorney, if he see sufficient reason, without calling for the proceedings. Const. No. 730.

and may replace on the file a case struck off on default.

1833. It is competent to the session judge, on sufficient grounds, to order the magistrate to replace on his file a case dismissed by him on default, or struck off without investigation of the merits in consequence of the plaintiff failing to attend or neglecting to prosecute his complaint. Const. No. 1169.

Appellate authorities ought not to communicate with

1834. A session judge should not communicate by letter with a party appealing from the order of a magistrate, nor furnish him with copies of the magistrate's explanations: he

should require the appellant to make his application on stamped paper; and, after calling on the magistrate for any explanation of his proceedings which appear necessary, proceed to determine the question at issue; leaving the appellant to apply in the usual manner for copies of any papers he may wish to have. Const. No. 818.

appellants by letter.

1835. The session judge may exercise the same power in punishing malicious, vexatious, or groundless appeals, as is vested in the magistrates* in regard to complaints of that nature. Const. No. 530.

Power to punish malicious, &c. appeals.

* *v. paras.* 387 *et seq.*

1836. A merely litigious appeal is not punishable; but if a prosecutor, whose case has been dismissed, persists in bringing before the appellate authority a charge evidently malicious or greatly exaggerated, it is competent to the latter to punish him as for such complaint. Const. No. 1208.

Merely litigious appeal is not punishable.

1837. Appellants from the decisions of magistrates are at liberty to employ whom they please to conduct their appeals. But agents so employed should secure their remuneration before undertaking the business, and should be given to understand that no assistance to enforce payment of it afterwards will be given. Const. No. 642.

Appellants may employ any one to conduct their appeals.

1838. A sudder ameen is not entitled to appeal from the decision of a magistrate in a case originally decided by the former, the right of appeal possessed by the dissatisfied party being sufficient for the ends of justice. Const. No. 1185.

Officers cannot appeal from orders reversing their decisions.

1839. Explanations are to be given, in the periodical statements, of all appeals which at the close of the month or year have been pending above three months. C. O. No. 209 of vol. 2.

Explanations of appeals pending above 3 months.

1840. When a session judge considers a conviction *bad in law*, he is not bound to go into all the facts and arguments referred to in the judgment of the magistrate. It is enough that he refers to, and decides on, what seems to him the governing point or points of a case. But *as to these*, he should fully notice all reasonings which the magistrate may have used. Letter from Nizamut Adawlut to Judge of 24 Pergunnahs, No. 378, April 14, 1853.

The appellate court should explain the reasons on which it sets aside a finding on the material points of a case.

1841. It is at all times lawful for the courts of nizamut adawlut to call for the records of any criminal trials of any subordinate court, and to pass upon them such orders as may seem fit. (a) Act XXXI. 1841, sect. 3.

Revision of cases.

Nizamut may always call for cases.

1842. But it is not lawful for the court of nizamut adawlut in cases so called for, or for any criminal court in appeals preferred to it, to enhance the punishment awarded, or to punish any person acquitted by the court below. Act XXXI. 1841, sect. 4.

But no court can enhance punishment on appeal.

1843. Whenever it appears to a session judge, from the returns furnished to him by the magistrate, that any case has not been sufficiently investigated, and that a further enquiry is practicable and requisite for the ends of justice, he is in the first instance to direct such additional enquiry to be made by the magistrate. Reg. IX. 1807, sect. 22.

If case is not sufficiently investigated, judge may order further inquiry;

(a) The power of the nizamut adawlut to call for and revise trials is given more at large in page 262, paras. 1438 *et seq.*

and he may at the same time reverse the order of the magistrate.

1844. There is nothing illegal in an order of the judge reversing that of the magistrate, and directing him to make further enquiry and to re-try the case *de novo*. Resolution N. A. August 11, 1854.

But such inquiry must be conducted by magistrate.

1845. The existing regulations give no power to a session judge to receive evidence, which has not been previously heard before the lower court, except in such cases as have been regularly committed to him for trial at the sessions. Any further enquiry, therefore, which he considers requisite under the above provisions, is to be instituted by the magistrate who is to communicate the result thereof to the session judge. Const. Nos. 1104, and 1169.

Sudder court can call for further evidence.

1846. In cases appealed to the nizamut adawlut, the court can always call for further evidence. Reports *L. P.* 1852, part 2, page 383.

Judge may call for proceedings of pending trial, and instruct the magistrate to bring it to a conclusion ;

1847. On inspection of the periodical returns furnished by the magistrate of cases pending, the session judge is to call for the magistrate's proceedings in any case that may appear to require it; and if, on perusal of them, he is of opinion that there is not sufficient reason for postponing the trial, he is empowered to instruct him to close his proceedings; and either to pass a final order if the case is determinable by the magistrate; or to bring it before the sessions, if there appear to be sufficient grounds for committing the prisoner to stand his trial. Reg. VI. 1818, sect. 2, cl. 1.

but in such case he is to pay attention to the reasons assigned by magistrate for delay.

1848. In exercising the power vested in them by the above clause for the purpose of preventing the long confinement of prisoners charged with criminal offences during the magistrate's investigation, without strong and sufficient cause for their detention, the session judges are required to give due attention to the reasons assigned by the magistrate for not passing a final order respecting the prisoners in each instance, and to be careful that their instructions to the magistrate in such cases are consistent with the objects of public justice, as well as with a just and humane consideration of the prisoner's actual condition, and the period of his confinement. Reg. VI. 1818, sect. 2, cl. 2.

Judge and magistrate may call for cases of subordinate courts, but cannot alter any order except on appeal by parties concerned ;

1849. It is at all times lawful for a session judge and for a magistrate, joint magistrate, or officer exercising the powers of magistrate, to call for and examine the records of any court immediately subordinate to their respective courts, for the purpose of satisfying themselves as to the regularity of the proceedings of such subordinate courts: but it is not lawful for any court under the degree of the nizamut adawlut to alter any sentence or order of any subordinate court, except upon appeal by parties concerned duly made according to the provisions of this Act. Act XXXI. 1841, sect. 5.

nor direct release of persons who have not appealed.

1850. The appellate court cannot direct the release of prisoners, who have not appealed, whether before or after their conviction. Reports *L. P.* 1855, part 2, page 725.

Duty of judge and magistrate under the above rule.

1851. Under the above provision, it is the duty of the session judge and magistrate to report any cases, the circumstances of which, on revision, suggest the propriety of interference, to the nizamut adawlut, in order that that court may proceed respecting them as appears proper. Such reports are always to be accompanied by the record of the case, to which the reference relates, and by an English letter commencing "Under section 5, Act XXXI. 1841, and circular order of the nizamut adawlut, dated 18th March 1842, I herewith transmit the record of the case, noted in the margin, to be laid before the nizamut adawlut,

Mode of reference to the nizamut adawlut.

with the following report." Hereafter is to follow a concise account of the irregularity or other matter on which the interference of the court is sought. The magisterial authorities are to send these reports, for submission to the court, through the office of the session judge to whom they are subordinate. The court did not think it necessary to define what descriptions of grave irregularity of procedure, undue severity of punishment, &c., would call for reports of this nature; but enjoined on all officers the exercise of a sound discretion in making such references, so that neither important errors and omissions may escape correction, nor the time of the court be needlessly engrossed by matters not demanding their interference. C. O. No. 106 of vol. 3.

Magistrate to submit cases through judge.

1852. Whenever a judge has occasion to forward a report under the preceding paragraph, together with the record of a case, for the orders of the court, he is in the first instance to communicate a copy of his intended report to the magistrate, or other officer, whose order he wishes to bring under the court's notice, with a view to that officer submitting such explanation of the nature and grounds of his proceeding as he may think proper to offer. On receipt of this explanation, if the judge continues to think it necessary that the case should be laid before the court, he is then to attach the explanation of the magistrate, or other officer, to his report, with any remarks in regard to it which may seem to him to be material. C. O. No. 65 of vol. 4.

In such cases judge is to call on magistrate for explanation.

1853. But a difference of opinion as to the guilt or innocence of a prisoner is no ground for a reference under the Act, especially when the prisoner has not availed himself of his right to appeal. Reports *L. P.* 1855, part 2, pages 190 and 731.

Difference of opinion as to guilt or innocence of prisoner, no ground of reference to sadder court.

1854. And a reference cannot be made with a view to the enhancement of punishment. Reports *L. P.* 1855, part 2, page 1005.

Reference cannot be made to enhance punishment.

1855. Although no person has a right of appeal to the session judge after the expiration of one month from the date of the magistrate's order, yet the judge is not only competent but it is his duty to send for any case, in which he may see reason to presume a failure of justice, though no appeal has been preferred to him, and without any reference to the source from whence his information is derived. Const. Nos. 437 and 986.

Higher courts may call for cases without reference to the source of their information;

1856. The period of appeal is limited merely as it relates to appellants without restricting the discretionary authority of supervision possessed by the superior courts. N. A. R. vol. 2, page 221.

or to the time which has elapsed.

1857. In ordinary cases when an appeal is lodged against an act of a magistrate, the session judge should confine himself to calling for the proceedings in the case, or for a vernacular kyfoeyut or report if such appears necessary; but in special cases he is fully competent, in his capacity of general control, to require a report in English on any particular points, which appear to call for explanation, especially in regard to any irregularities or other defects apparent in the magistrate's proceedings. Const. No. 1071.

In special cases judge may require English reports of case from magistrate.

1858. The magistrate is to comply with any application from the session judge to inspect the English correspondence of his office, whether with reference to any particular foudaree case pending before him, or for the general purpose of acquainting himself with all

Session judge may inspect the English correspondence of magistrate's office.

official matters connected with the welfare and management of the district. C. O. No. 5 of vol. 2.

In forwarding explanations, the higher court is to give opinion.

1859. Officers forwarding explanations of their subordinates, are invariably to state whether they consider the same to be sufficient and satisfactory or otherwise. C. O. No. 219 of vol. 2.

No appeal to privy council.

1860. There is no law which authorizes the admission of an appeal to the privy council from the sentence of the nizamat adawlut. N. A. R. vol. 6, page 94.

SECTION II.

OF DIFFERENCE OF OPINION BETWEEN JUDGE AND MAGISTRATE.

Mode of procedure if magistrate thinks an order of the session judge unwarranted by or contrary to the regulations.

1861. Whenever it appears to a magistrate that a precept issued to him by a session judge is contrary to, or unwarranted by the existing regulations, he is authorized to state to the judge in what respects he considers his precept to be in deviation from the regulations, and to suspend execution till receipt of a second precept in reply to his objections. But if the second precept of the session judge, in reply to such objections, confirms his first precept in whole or in part, and requires the magistrate to execute the same without further reference, he is immediately to comply with such requisition. In case, however, the second precept does not satisfy the magistrate that the regulations have been rightly construed by the session judge, he is at liberty at the same time that he certifies the execution of the order to request the session judge to transmit copies of the precepts, and his returns thereto, with such other papers as are necessary for the information of the circumstances of the case, to the nizamat adawlut; and the judge is accordingly to transmit such papers, as requested, without any unnecessary delay. Provided, nevertheless, that this is not to be understood to authorize any magistrate to question the propriety of any order issued by a session judge in cases clearly left to his discretion and judgment by the regulations; the reference to him, and eventually to the nizamat adawlut, meant to be authorized by this regulation, being confined to cases in which the sense of the regulations, from a difference of construction or otherwise, appears doubtful and uncertain. *Beng. and Ben. Reg. X. 1796, sect. 2. Ced. Prov. Reg. XXII. 1803, sect. 2.*

But these rules apply only to a difference of opinion as to the construction of the regulations;

and do not authorize the magistrate to offer objections to a final order.

1862. A magistrate is competent, under the above provisions, to require a reference to the nizamat adawlut, when he deems any order passed by a session judge in miscellaneous matters to be repugnant to the regulations; but he is not competent to offer any objections to a final order or decree, the remedy against which consists in an appeal by one of the parties interested. Const. Nos. 390 and 479.

Magistrate cannot object to the admission of an appeal.

1863. A magistrate cannot demand a reference to the nizamat adawlut on the plea that an appeal from his decision has been admitted by the judge on other grounds than those

authorized by the regulations, as by so doing he would place himself in the light of an advocate of one of the parties. Const. No. 536.

1864. A magistrate referred a case to the nizamut adawlut, in which the court of circuit released certain prisoners on the ground that the evidence was in their judgment insufficient for conviction; but was informed that his reference was not agreeable to the intent of the above provisions, inasmuch as it was clearly competent to that court to annul his order on such ground, and that the judges were therefore authorized to decline forwarding the reference. Const. No. 433.

Judge may refuse to forward reference, if the order objected to depended upon his discretion and judgment.

1865. A magistrate was informed that his neglect to obey the order of the session judge, until it had been repeated three times, was irregular and unwarranted by the above or any other regulation. Const. No. 437.

Magistrate cannot refuse to obey a second order;

1866. A magistrate, having determined to refer a disputed point to the nizamut adawlut, should not decide the case out of which the point has arisen, until again directed to do so by the session judge to whose order he objects. Const. No. 1030.

but, if he objects, should not obey it till then.

1867. All discussions regarding the relative powers of the European officers, or animadversions upon points of a general nature, not immediately connected with the trial and decision of any case, should as far as possible be kept distinct from the judicial proceedings, and conducted in the English language. C. O. S. D. A. No. 26, April 18, 1811.

Such discussions should generally be conducted in English.

1868. In making references to the nizamut adawlut, copies are to be transmitted instead of original papers, unless the officer referring thinks it more proper to send originals, in which case he is to prepare copies for record in his office before submitting the originals. C. O. No. 126 of vol. 2, L. P.

Papers are not to be sent in original to the nizamut adawlut.

1869. Whenever any proceedings in miscellaneous cases are referred to the nizamut adawlut for their opinion, orders, or information, the papers in the native languages should be accompanied by an English letter specifying briefly the contents (which should be corroborated and borne out by the papers accompanying it), and the particular point on which the orders of the court are required. C. O. No. 184 of vol. 2.

Papers are to be accompanied by an English letter.

1870. In all instances wherein a reference to the nizamut adawlut is made under the above provisions, the determination of such court is to be held final and conclusive. *Beng. and Ben. Reg. X. 1796, sect. 3. Ced. Prov. Reg. XXII. 1803, sect. 3.*

Determination of sudder court is final.

1871. If any doubt occurs to the nizamut adawlut with respect to the meaning of any part of the regulations; or if it appears to them, on the occasion of any reference, that the regulations do not sufficiently provide for the case submitted to their decision; they are in the former case to report the circumstances of it to government, that a new regulation may be framed in explanation of such doubt; and in the latter case are to propose a new regulation. *Beng. and Ben. Reg. X. 1796, sect. 4. Ced. Prov. Reg. XXII. 1803, sect. 4.*

How the nizamut adawlut is to proceed if in doubt.

1872. A copy of any correspondence passing between the session judge and magistrate, which discusses matters relating to the state of the district, or the mode of conducting business in the magistrate's office, is to be sent by the judge to the nizamut adawlut. C. O. No. 277 of vol. 1.

Copy of certain correspondence between judge and magistrate to be sent to nizamut.

CHAPTER VI.

OF RULES OF OFFICE.

SECTION I.

OF THE CUTCHERRY AND OFFICIAL PROCEEDINGS.

Cutcherry.

Letter to nizamat
on delivering
charge of office.

1873. An officer delivering over charge of his office is to state in his letter to the nizamat adawlut the authority for so doing, the date of the order under which he acts, and the nature of the power vested in the relieving officer. C. O. No. 157 of vol. 2.

List of unanswered
letters to be
furnished to succe-
sor.

1874. An officer delivering over charge is to furnish the officer who relieves him with a list of all unanswered letters, and of all periodical reports and statements, which having become due have not been forwarded. Periodical reports and statements are considered as due immediately on the expiration of the period to which they relate. C. O. No. 179 of vol. 2.

and minute to be
recorded by the
vacating officer of
his opinions of su-
bordinate officers.

1875. Session judges and magistrates are invariably, prior to delivering over charge of their offices on quitting a district, to record a minute to be made over to their successor, containing their sentiments and opinions on the administration of those subordinate to them up to the period of their quitting the office of control, as well as any other observations, or results of experience, which they deem necessary or useful. C. O. No. 103 of vol. 3.

Rules for preser-
vation of books in
offices ;

librarian ;

catalogues ;

books to be
numbered and
stamped ;

receipt for books
taken out of libra-
ry.

1876. With a view to ensure the better preservation of the books belonging to the public offices, which are the property of government, the court issued the following rules :
1st. The head clerk of the English office is to be appointed librarian. He is to be primarily responsible for the custody and preservation of the books composing the office library ; but this is not to relieve the judge or magistrate, or other presiding authority, from the general responsibility devolving on him as head of the office. 2nd. Correct catalogues are to be kept up of the books in the library, showing the date of the receipt of each book. They are to be of English paper, and strongly bound for permanent record. 3rd. Each book should have a number labelled upon it, corresponding to a number in the catalogue ; and should also be marked on several leaves with the office stamp. 4th. Whenever a book is required out of the library by any officer, other than the judge or magistrate competent to require the same, the librarian is to send a receipt on a slip of paper, which the recipient will sign and return on getting the book : such receipts to be destroyed on the book being returned to the office. C. O. S. D. A. No. 71, July 26, 1855, *L. P.* ; and C. O. No. 1183, July 3, 1855, *W. P.*

1877. All officers in civil employ on delivering over or receiving charge of an office, are to certify that the copies of Regulations, Acts, gazettes, books of constructions, printed circulars, and other works furnished by government for the use of the office, are in good order and complete. A detailed catalogue must be given and a receipt taken, and the observance of this rule distinctly notified in the report of the officer receiving charge, who will be held responsible according to the receipt granted by him. Govt. Order, *W. P.* November 25, 1841.

Certificate of books of regulations &c. to be given by officer taking charge.

1878. An officer, who holds the offices of collector and magistrate, will not be exonerated from the responsibility, which attaches to the latter office, by urging in extenuation of mal-administration that the criminal duties were intrusted to the joint magistrate. C. O. No. 103 of vol. 3.

Responsibility of officers.

1879. Magistrates and other judicial officers are to be careful that no more holidays are allowed than those specified in the court's orders (C. O. S. D. A. No. 52, April 6, 1816), which are indispensable under the obligation of religious observances.^(a) C. O. No. 50 of vol. 2.

Holidays.

1880. Although there is no law forbidding a magistrate to work on Sundays, and it may be at times necessary for the peace of the district that he should do so, it can scarcely be requisite to dispose on Sundays of cases in his judicial capacity. An order passed on Sunday is not invalid simply on that account; but the magistrate should refrain from opening his court on Sundays except for police purposes and the prevention of crimes and offences which call for immediate intervention of authority. Letter of Nizamut Adawlut to Judge of Jessore, No. 122, January 27, 1853.

How far magistrate may transact business on Sundays.

1881. The trial of such cases as have been committed and are ready for trial previous to the commencement of the vacation should be completed, although the vacation supervenes in the course of it. And the court of the session judge is never to be closed, during the dashara and mohurrun vacations, for the despatch of criminal business, except on those days only when a total cessation from all business is necessary and usual. C. O. No. 141 of vol. 2; and No. 8 of vol. 3.

Sessions court during the vacations.

1882. Applications for leave of absence in the lower provinces are to be addressed by the session judge direct to the judicial secretary to government. C. O. No. 134 of vol. 3, *L. P.*

Leave of absence. *L. P.*

1883. In the Western provinces, such applications are to be submitted through the sudder court and are always to be accompanied by a statement of the number of cases remaining undecided at their date on the several civil and criminal files of the judge's office. In cases of illness or emergency a copy of the application made to the court may be forwarded direct to the secretary to the government. Government Order *W. P.* No. 4199, November 5, 1853.

Applications for, *W. P.* to be sent through sudder court.

1884. No persons, except the guards on duty, are to be allowed to wear arms within the cutcherry. C. O. No. 172 of vol. 2.

Armed persons not allowed in cutcherry.

(a) It appears to be the present practice of the court to publish annually a list of the holidays to be allowed during the ensuing twelve months.

Care of glass windows in cutcherry.

1885. The civil officer at the head of each cutcherry is to make some one person of the establishment answerable for the glass in each room, that person being liable to pay for any panes that may be broken, unless he informed his superior at the time, and either proved the fracture to have been unavoidable or produced the person who broke them. The mode of dealing with persons breaking panes is left to the sense and discretion of the officer at the head of the department. Glass is not to be used in the windows and doors of civil buildings nearer the floor than $3\frac{1}{2}$ or 4 feet, by order of the military board. C. O. S. D. A. No. 35, May 31, 1839. C. O. No. 46 of vol. 3.

The practice of transacting public business in private residences is objectionable.

1886. In reply to a question whether magistrates are allowed, under any circumstances, to transact the current business of their offices in their private dwellings, the nizamat adawlut thought it sufficient to observe that, when sitting as a criminal judge, the magistrate must sit in the established court-house; at the same time they declined to enter upon the general question of the powers of a magistrate out of office. On another occasion the court held the practice of transacting public business in private residences to be objectionable, and accordingly interdicted it. Const. No. 645. C. O. No. 21 of vol. 2.

Sessions must be held in the court house.

1887. The nizamat adawlut quashed the proceedings in a case, in which the session judge held the trial of a prisoner in the jail on account of her approaching confinement; and directed that she should be tried *de novo* in the established court house, as soon as she should be sufficiently recovered. N. A. R. vol. 6, page 33.

Correspondence.

Letters are to be numbered in a continued series; to be concise; and distinct on separate subjects.

1888. The letters dispatched from each office are to be numbered in one continued series from the commencement to the close of the year. All officers in their correspondence, as well with each other, as with their respective governments, are to write separate letters on separate subjects, and to annex to each letter a short abstract of its contents. Those letters which contain the most useful information and pertinent suggestions or instructions within the shortest compass are the most valuable, and will be held by the superior authorities in the highest estimation. C. O. No. 184 of vol. 2; and No. 72 *W. P.* of vol. 3. C. O. S. D. A. No. 20, July 2, 1830.

Quotations of letters received how to be made.

1889. Officers who have occasion to refer in their letters to any numbered paragraphs of letters received, are to state briefly in the margin the substance of the several paragraphs to which they so refer. Every letter should, as far as possible, be made intelligible in itself without reference to any other document for the elucidation of its meaning. C. O. No. 150 of vol. 3.

Correspondence to be condensed by forwarding letters with a mere endorsement, when practicable.

1890. With a view to reduce as much as possible the bulk of public correspondence, it is directed, that in cases of minor importance, and certainly in all cases where the mere report of an occurrence or solicitation of formal sanction is made, the reference should not be by the transmission of several enclosures, being the originals or copies of each reference from the several subordinate officers in succession, but by a single letter or endorsement; and this rule should be applied whenever it is practicable. In cases which involve an important principal, or which may be intricate in their details, and which may have produced elaborate discussions, which cannot be rightly conveyed by any abbreviation, it is of course

proper, that the mass of the papers should be forwarded ; but this should always be avoided when practicable. C. O. No. 17 of vol. 4. C. O. Sup. Pol. *L. P.* No. 7 of 1848.

1891. Magistrates are to file separately the circulars and correspondence of the superintendent of police. When letters addressed to that officer require immediate attention, the word “immediate” or “urgent” is to be endorsed on the cover. C. O. Sup. Pol. *L. P.* Nos. 18 of 1838 ; and 2 of 1841. Correspondence of and with superintendent of police.

1892. Sealing-wax is not to be used for public dispatches ; envelopes are to be closed with gum arabic ; and the seal of office is to be stamped upon each in lamp-black. Govt. Notification, Aug. 17, 1842. Sealing wax not to be used.

1893. Officers are to be careful that native gentlemen, and particularly those of high rank, are addressed in all public documents in a courteous style suitable to their station in society. C. O. No. 95 of vol. 3. *L. P.* C. O. Sup. Pol. *L. P.* No. 18 of 1841. Address of native gentlemen.

1894. Official communications in the native languages between European covenanted officers and uncovenanted judges should be made by roobakaree. The following forms of address are to be used in official communication with such officers : Mode of communication with and form of address of uncovenanted judges.

Principal Sudder Ameen.

Christian,	..	..	..	..	..	Sir,	..	..	..	..	Esquire.
Mahomedan,	..	..	..	..	..	لیاقت و اہلیت ماب سلمہ اللہ تعالیٰ	..	..	..	..	خان بہادر
Hindoo,	..	..	..	..	..	ایضاً	..	..	..	..	رای بہادر

Sudder Ameen.

Christian,	...	...	...	...	...	Sir,	...	...	...	...	Esquire.
Mahomedan,	...	...	...	...	...	رفعت و عوالی منزلت سلمہ	...	...	...	...	خان
Hindoo,	...	...	...	...	...	ایضاً	...	...	...	...	رای

Moonsiff.

Christian,	...	...	...	...	...	Sir,	...	...	...	...	Mr.
Mahomedan,	...	...	...	...	...	لعافیت باشند	...	...	...	...	دیانت و امانت پناه
Hindoo,	...	...	...	...	...	ایضاً	...	...	...	...	ایضاً

C. O. Nos. 122 and 128 of vol. 2.

1895. The simplest form for a magistrate to use in notifying a wish to have the services of any party as an arbitrator, is to send a copy of the roobakaree recording consent to arbitration, with these words, or a translation of them, written below “—copy of the above proceeding forwarded to—for his information. The attendance of—is requested at the office of the magistrate on—date.” Or, “he is requested to signify his acceptance of the office of arbitrator by returning this copy with a note stating such acceptance entered on it, to the magistrate’s office—date.” This copy of the proceeding should be authenticated by the magistrate’s official seal and signature. C. O. No. 87 of vol. 4. Mode of notifying the appointment of any person as arbitrator.

Records.

Record keepers to keep a register of all records;

1896. The record-keepers are to keep a register, in the vernacular, of all the proceedings, documents, and other records belonging to the court to which they are respectively attached, in a book, each leaf of which is to be attested by the officer presiding or his assistant, and on the last leaf of which he is to specify in his own hand-writing the number of pages contained in the book. *Beng. Reg. XVIII. 1793, sect. 4. Ced. Prov. Reg. XIII. 1803, sect. 4.*

and to endorse each paper with a reference to such register.

1897. The record-keepers are to endorse upon the back of every paper or document, which they enter in the register, the number of the page in which it is registered, and the endorsement is to be attested with their official signature. *Beng. Reg. XVIII. 1793, sect. 5. Ced. Prov. Reg. XIII. 1803, sect. 5.*

And to take care that the records are not destroyed, or removed;

1898. It is the duty of the keepers of the records to see that the records of the court are not destroyed by insects, damp, or otherwise, and that they are not removed without the orders of the court. *Beng. Reg. XVIII. 1793, sect. 6. Ced. Prov. Reg. XIII. 1803, sect. 6.*

under penalty of dismissal.

1899. If any records entered in the register are destroyed in consequence of the neglect or any omission of the keeper of the records, or if any such records are not forthcoming and they are not able to give a satisfactory account of them, they are liable to dismissal from office. *Beng. Reg. XVIII. 1793, sect. 7. Ced. Prov. Reg. XIII. 1803, sect. 7.*

Mutilation or removal of records punishable as forgery.

1900. The nizamut adawlut circulated a notification in the native languages, to be published in all offices, cautioning the native officers against making illegal alterations in or changing the public records, and pointing out that such offences are punishable as forgery under the provisions of Reg. II. 1807. C. O. No. 57 of vol. 1.

Responsibility of officers to keep their records in order.

1901. Any officer who permits the records of his office to fall into disorder is to be held responsible to government for the expenses incurred in their re-adjustment; and any functionary receiving charge of an office, the records of which are in disorder or so immethodically arranged as to prevent the ready production of papers when called for, who fails to make a timely report of their state, is to be similarly held answerable for the outlay attending the assortment of the records. C. O. No. 122 of vol. 3.

Native officers may be compelled to deliver records.

1902. As there is no specific provision in the regulations for compelling native officers of government to deliver over charge of the records of the office, such cases must be treated under the general regulations.(a) Const. No. 176.

Books of subordinate offices of registry of deeds to be deposited among the magistrate's records
L. P.

1903. The register books of offices established under Act XXX. 1838 are to be deposited in the Lower Provinces of the presidency of Bengal among the records of the magistrates or joint magistrates, and in the North Western Provinces among the records of the collectors, of the stations where such offices have been or shall be hereafter established. Act XI. 1851.

Revenue authorities cannot demand to see records.

1904. The revenue authorities are not entitled to demand that the records of cases should be sent to them for inspection: but they may depute an officer to examine such records with the permission of the court. Const. No. 693.

(a) It is an offence under the Mahomedan law for a dismissed officer to retain possession of the records of his court, because they can in no case be considered as his property. See Hedaya, Book XX. Chap. 1, "Of the duties of the Kazee."

1905. Vakeels, barristers, and attorneys of the supreme court, and their agents, or the parties themselves, or their authorised agents, should be permitted, under proper precautions, to have access to the records in criminal cases in which they are themselves concerned or engaged, and without requiring a petition for such permission on stamped paper. Letter of Nizamut Adawlut to Judge of the 24-Pergunnahs, No. 1580, November 26, 1852.

Access to records of criminal cases.

1906. In 1831 the magistrates were authorized to destroy all the Persian records of their courts of a date prior to the 31st December 1815, except the proceedings in cases of commitment for trial before the court of circuit, and any other records which they thought it necessary to preserve. So in 1835 the magistrates in the lower provinces were allowed to destroy the Persian records of their courts of a date prior to the 31st December 1820, with the same precautions: and those in the Western provinces, who required more room in their record offices, were permitted to burn such papers in each case as were connected with the investigations of the police. And in 1850 the court sanctioned the destruction of accumulated records of the magistrates' courts from 1830 to 1845 inclusive, but directed that all records of cases under Act IV. 1840 should be preserved. C. O. Nos. 88, 180, and 182 *W. P.* of vol. 2, and No. 35 of vol. 3, *W. P.*

Destruction of old records.

1907. Records of sessions trials generally of above twenty years' date; and all records of trials of above ten years' date in which the prisoners were acquitted, or in which the period of sentence has expired; and records of cases appealed to the sessions court of above five years' date: may be unobjectionably destroyed, and should be destroyed from year to year to prevent accumulation. But individual cases and papers may be preserved on any grounds which appear to the judge sufficient; and in cases of acquittal or expiry of sentence the final roobakaree should always be preserved, as well as the entire record of those cases in which accused parties are still eluding apprehension. C. O. No. 1527, December 8, 1854. *W. P.*

Rules of 1854 *W. P.* for selection of records to be destroyed.

1908. Old records may be made over to magistrates for the purpose of manufacturing paper instead of being burnt. But due precaution must be used that the papers may not be misapplied; and the papers should be torn into small pieces before they are removed from the record room. C. O. Government Bengal, No. 19, April 4, 1855.

To be made over to jail for paper manufacture;

1909. When such records are made over to the jail by the revenue offices, they are to be paid for at the current market rate for waste paper. C. O. Government Bengal, No. 23, June 15, 1855.

and to be paid for.

1910. To prevent the specification of additional documents in applications for copies after their presentation and the passing of an order upon them, petitioners are to be required to mention in words the number of documents of which transcripts are required, and to insert the date of application immediately after the list of papers. C. O. No. 132 of vol. 3.

Copies.
Applications for copies.

1911. When a deed has been once filed in court, it becomes a record, and a copy may be taken on the stamp prescribed for copies of records. Const. No. 428.

A deed once filed becomes a record.

1912. Minutes recorded by the judges of the sudder dewanny and nizamut adawlut on a question of general importance and submitted to government, are not to be considered as public documents; consequently, copies should not be granted to private individuals on their application. Const. No. 718.

Minutes of judges of the nizamut adawlut.

Letters from or resolutions passed by the nizamat adawlut.

1913. Whenever applications are made for copies of any letters from or resolutions passed by the nizamat adawlut, the applicants are to be referred to that court. This rule does not apply to the sentences of the court in criminal trials; and in the Western provinces, it is applicable only to copies of letters, resolutions, and other orders recorded in the English language. C. O. Nos. 160, L. P. 207, W. P. and 218 W. P. of vol. 3.

Copies may be made by individuals at their own expense on unstamped paper.

1914. Individuals may make, for their private use and at their own expense, copies of judicial papers, with the permission of the court, on any paper which they prefer; but if such copies are not made on stamp paper, they are not to be authenticated by the seal or signature of any court or public officer, and are not to be received as evidence in any court of justice, or in any public office whatever. Reg. XXVI. 1814, sect. 16, cl. 4.

1915. The above provision has not been repealed by the subsequent stamp laws. Const. No. 408.

Persons, not officers of the court, may be employed in making copies.

1916. The prohibition contained in sect. 2. Reg. VIII. 1825, against the employment of others than the duly constituted officers of the court, need not be construed to preclude other persons than the regularly appointed officers of the court from taking copies of public documents, with the sanction of the officer presiding, for the use of private individuals, at the expense of those who employ them. Const. No. 407. Reg. III. 1829, sect. 6.

Papers required to be filed in the supreme court.

Copies how to be prepared.

1917. The presiding officer of any court on application being made to him in the usual form for leave to take a copy of any recorded *proceeding* of his court, for the purpose of being produced in evidence before her majesty's supreme court of judicature, is (provided there be no special objection to granting the copy, in which case a proceeding to that effect should be recorded by the presiding officer) to direct such copy to be made at the expense of the party applying for the same; and is to permit the same, when made, to be examined with the original proceeding by the record-keeper or other person intended to be produced as a witness to the correctness of such copy; and, if any commission shall have been issued out of the said supreme court to such presiding officer for the examination of such person, to examine him according to the tenor of such commission; or, if the party applying for such copy is satisfied with such certificate, to certify under his hand that such copy is a true copy of the proceeding whereof the same purports to be a copy. C. O. No. 45 of vol. 4, L. P.

Rules for the production of documents.

1918. The presiding officer of any court, on application being made to him in the usual form for directions for the production of any *document* in his court, which may be required to be produced in evidence before the supreme court, is immediately to record a proceeding declaring whether there is, or is not, any objection to the production of the document in question, and a copy of such proceeding is to be given to the applicant. The objection, whether arising from the pendency of any case to the decision of which the document is necessary, or other cause, is to be fully stated in the proceeding; and the presiding officer is in that case to use his best endeavour to remove the objection by the decision of the suit, or otherwise, as speedily as may be practicable. If the presiding officer records that there is no objection to the production of the document in question, or if any recorded objection be afterwards removed, then upon service upon the record-keeper of a *subpoena*

duces tecum, and on tender of his expenses, the record-keeper, or some subordinate officer commissioned by him, is to proceed with the document in question to Calcutta, and produce the same before the supreme court according to the exigence of the subpoena. C. O. No. 45 of vol. 4, *L. P.*

1919. The names of the heathen deities are not to be prefixed to the proceedings or orders of the courts, or to any processes emanating therefrom. But this has no reference to petitions, documents, or papers of any kind, presented to the courts, in regard to which all interference is prohibited. C. O. No. 96 of vol. 3, *L. P.*

Proceedings.

Not to be headed by heathen deities.

1920. Act XXIX. 1837 gives the governor general in council power, by an order in council, to dispense either generally, or within such local limits as should seem meet, with any provision of any regulation of the Bengal Code, which enjoins the use of the Persian language in any judicial proceedings or in any proceeding relating to the revenue, and to prescribe the language and character to be used in such proceedings: and also to delegate this power to any subordinate authority. Accordingly, such power having been delegated to the governor of Bengal, it was directed that, in the districts comprised in the Bengal division of the presidency of Fort William, the vernacular language of those districts should be substituted for the Persian in judicial proceedings and in proceedings relating to the revenue. C. O. S. D. A. No. 3, February 9, 1838.

The vernacular substituted for the Persian language.

1921. The Oordoo language is the language of record in all proceedings and orders in the nizamat adawlut at the presidency, and it is to be written in the Persian character. In criminal trials referred to that court, with exception to trials for the crime of thuggee, all papers which are not drawn up in the Persian or Oordoo language, are to be accompanied by translations in the latter. In districts in which the Oordoo language is current, it is to be written in the Nagri character. In districts in which either the Oordoo or the Bengalee is the current language, parties are to be allowed to present all petitions and pleadings in any language they think most suitable to their purpose; but any document so presented, which is not written either in the Persian, Oordoo, or Bengalee, is to be accompanied by a translation in one of those three languages. The same rule is applicable to futwas and bewustahs required from the law officers. The authorities in the Bengal districts are to correspond with each other in the vernacular language, and to employ the Oordoo in their correspondence with the courts of other districts. The same rule is to be observed, *mutatis mutandis*, in Cuttack and the other provinces subject to the jurisdiction of the nizamat adawlut. C. O. S. D. A. No. 42, July 5, 1839. C. O. No. 112 of vol. 3, *L. P.*

The Oordoo the language of the nizamat adawlut.

To be written in the Nagri character.

Petitions, pleadings, and futwas.

Correspondence.

1922. In using the Bengalee language, the courts are to adopt a style equally removed from the colloquial and that employed by the pundits; officers are to pay particular attention to this subject, and to refer their amlah to the Bengalee version of the Regulations of 1793, in regard both to the style, and the terms which usually occur in legal proceedings. C. O. No. 84 of vol. 3, *L. P.*

Style to be adopted in the use of Bengalee.

1923. In the Western provinces, the use of Persian in all criminal proceedings, petitions, and writings of what kind soever, is to be wholly discontinued, and the Hindoostanee to be adopted in its stead. In criminal trials referrible to the nizamat adawlut, Persian transla-

The Hindoostanee to be substituted for the Persian in the Western provinces.

tions of evidence recorded in the vernacular need not be transmitted : but it is the duty of session judges to transmit all proceedings they refer to, or send up on a call of, the court, written in a correct Oordoo style, and fair and legible character ; and to require the magistrates, whenever uncommon words or obvious provincialisms occur in a record of evidence, to cause the mohurir at the time of taking it down to enter in the margin the corresponding or equivalent term in Persian. The style used must be clear and idiomatic ; and it is not sufficient merely to substitute a Hindoostanee for a Persian verb at the end of a sentence. C. O. No. 26 of vol. 3, *W. P.*

Style of composition in Oordoo.

1924. There are two styles of composition in Oordoo; one little distinguished from Persian, excepting in the use of Hindee verbs, particles and inflections ; the other having a much freer use of ordinary Hindee words and made designedly as easy as practicable to persons not familiar with Persian. The latter is the style which without any needless or affected avoidance of well-established Persian words or expressions should be habitually employed in all the public offices. Government Order, *W. P.* No. 633 A, May 9, 1854.

Correspondence with officers at Hazareebagh, &c.

1925. All proceedings addressed to the assistant to the governor general's agent stationed at Hazareebagh or Lohardugga, are to be written in the Oordoo language. C. O. S. D. A No. 27, November 23, 1838.

Oordoo to be used in thuggee proceedings.

1926. The Oordoo Hindoostanee, which is the language most universally prevalent throughout India, and with which even the thugs of Lower Bengal must, from their wandering habits and practice of conversing with travellers from all parts of the country, be well acquainted, is to be used by all the officers employed in the investigation of charges for thuggee. C. O. No. 241 of vol. 2.

Language to be used in cases in which Europeans are concerned.

1927. All processes issued to an European defendant should be in the ordinary language of the court and in English. Such person filing his pleadings and petitions in the vernacular on the prescribed stamp may be permitted to add translations thereof in English on unstamped paper : but it is no part of the duty of the court to furnish him with translations ; he must procure a person duly qualified to interpret for him. The deposition of an European witness must be recorded in English, and a vernacular translation made by the court and annexed thereto. Const. No. 1035.

Miscellaneous.

Mode of calculating the period allowed for any official act.

1928. When the period, within which an appeal should be lodged or any official act done, consists of days or weeks, the full number of days or weeks mentioned in the order is to be allowed, exclusive of the day on which the order is passed ; and when a month or year is mentioned, it should be reckoned according to the English calendar, that is to say, the month should not be invariably reckoned at thirty days, and the year should comprise twelve English calendar months. C. O. No. 158 of vol. 3.

References to the advocate general.

1929. All references which are made for the opinion of the advocate general on points of English law are to be submitted through the nizamat adawlut. C. O. No. 133 of vol. 3.

References regarding chemical questions to be

1930. All references regarding chemical questions and operations on account of government, are to be made to the professor of chemistry, medical college, Fort William, who

is privileged to issue and receive letters connected with his department free of postage. But such references are to be limited to cases of urgent necessity, in which the local medical officer cannot afford the required information, and to doubtful cases of poisoning, &c., regarding which there is need of information for directing the researches of the police. Magistrates are not to call upon the chemical examiner to make affidavits before one of the magistrates of Calcutta, regarding any matter referred for examination, as such affidavits are not legal evidence. C. O. Nos. 110, and 146 of vol. 3. In such cases ordinary recourse should be had to the local professional agency on occasions needing an analytical detection of poison in substances or human subjects. C. O. No. 1282, October 10, 1854. *W. P.* With this view tests and apparatus for medico-legal investigations have been forwarded to the civil surgeons at Benares, Mirzapore, Allahabad, Cawnpore, Meerut, Delhi, Agra, Bareilly, Moradabad, and Saugor; and magistrates requiring professional agency for the detection of poison should forward the suspected articles to the magistrate of the nearest of those districts. C. O. No. 1550, November 17, 1855. *W. P.*

made to the professor of chemistry, medical college;

who is not to be required to make affidavits before a magistrate.

In some places reference can be made to local officers.

1931. Officers, forwarding to the examiner substances for chemical examination, are to furnish him with every detail that can be obtained both from the civil surgeon and those persons who depose to the facts of the case. C. O. No. 129 of vol. 3. C. O. Sup. Pol. *L. P.* No. 6 of 1843.

Details of the case are to be forwarded with such reference.

1932. No English stationery of any kind is to be charged for in contingent bills, as such articles are to be obtained by indents upon the government stationery office, which are to be drawn out in printed forms supplied by the superintendent. All differences, which may arise between the superintendent and indenting officers are to be referred for the decision of the board of revenue. As a general rule all indents should be annual; and from all offices above Allahabad should be despatched by the 1st May, from other offices by the 1st October. On the receipt of packages, they are to be opened and their contents counted before the head of the office or his assistant. Complaints as to the quality of supplies received should be accompanied by an average sample of the article complained of, duly attested by the complaining officer, and the marks on the packages are to be reported. If good articles have been damaged in transit, the cause should be noted. Articles may be purchased on the spot, only when indispensable; and supplies should be borrowed from neighbouring offices. The actual expenditure on country paper, and other articles not supplied on indent, is to be included in a monthly bill, and forwarded to the superintendent. Care is to be taken to prevent the use of government stationery in any other than the public service. The stores should be kept under lock and key of a responsible writer in the office, whose name is to be attached, in addition to that of the indenting officer, to all indents. A book is to be kept of all issues of stationery; and such issues are to be acknowledged therein by the signature of the person who takes the articles. Packing cases received from the stationery office are to be sold, and the proceeds credited to the superintendent. Government Order, *L. P.* and *W. P.* April 1851.

Rules for the supply of stationery by indent on stationery office.

Date of indent.

Receipt of supplies.
Complaints.

Articles not to be purchased on the spot.

Monthly bills.

Precautions against misuse.

Book of expenditure.

Packing cases to be sold.

1933. All paper used in the courts is to be properly prepared for the purposes of record, such materials being used in the manufacture as will render it proof against the

All paper used for record must be so prepared as to be

proof against the attacks of insects.

attacks of insects. Arrangements may be made by the different offices with the courts for a regular supply of jail-made arsenicated paper to the several judicial and police officers stationed in the interior of the district; and where the local jail may not be able to furnish a sufficient quantity, it may perhaps be possible to procure it from an adjacent district without greatly enhancing the cost. It might be desirable to encourage private paper-makers; but proper precautions should be taken to prevent the substitution of turmeric for yellow arsenic, the appearance being similar, but the difference easily discernible to the smell or taste. C. O. S. D. A. No. 19, May 12, 1854.

Indents for forms on the government lithographic press.

1934. No charge whatever is made for forms printed at the government lithographic press. Whenever an officer requires lithographic forms of any description, he is to apply direct to the superintendent of the government press for them, and not through the nizamat adawlut; but he is to indent for those forms only which have been approved of by the court. Such forms are kept in readiness; but, if it is inconvenient to wait for them, the statements are to be drawn out in precisely the same forms as those issued from the court: and no alterations should, on any account, be made in any form directed by the court to be used, except with their express permission. C. O. Nos. 118, *W. P.* 136, para. 15, and 235, *L. P.* of vol. 2.

To be accompanied with specimens.

1935. Officers indenting on the government lithographic press for forms of statements &c., are to forward to the superintendent, with their indents, a specimen of the smallest size of paper on which the forms may be executed without material inconvenience. C. O. No. 121, repeated in No. 169 of vol. 3.

Indent for forms of criminal process.

* Similar forms were issued *L. P.* under C. O. No. 11, January 19, 1855.

1936. The court circulated a set of forms of criminal process;* for a three months' supply of which the magistrates are directed to indent upon the Secundra Orphan Press through the court. The number of the English version of the forms indented for will of course depend on the average number of European defendants and witnesses summoned before the criminal courts. For the sake of convenience the registered number of each form is given in the annexed indent.

Form of indent.

No. of process.	NUMBER OF COPIES REQUIRED FOR 3 MONTHS' SUPPLY.			
	Registered No.	English	Registered No.	Oordoo.
1	140		159	
2	141		160	
3	142		161	
4	143		162	
5	144		163	
6	145		164	
7	146		165	
8	147		166	
9	148		167	
10	149		168	
11	150		169	
12	151		170	
13	152		171	
14	153		172	
15	154		173	
16	155		174	
17	156		175	
18	157		176	
19	158		177	

1937. An indent is to be submitted, in the following form, to the register of the nizamat adawlut, on the 1st October of each year for such forms of statements, warrants, &c., usually supplied to the local authorities from that office, as will be required for the ensuing year.

Indent for lithographic forms to be submitted on the 1st October. *L. P.*

<i>Indent for lithographed forms for the year 1848.</i>			
Description of form.	No. last applied for.	No. in store on 1st October 1847.	No. now indented for.

C. O. No. 26, July 9, 1847. *L. P.*

1938. Whenever there is occasion to require the aid of establishments of a contingent and temporary character, officers are to submit, in every practicable case, and when time will admit of it, a statement of such extra charges, in order that they may be sanctioned by government before they have been actually incurred. C. O. No. 86 of vol. 4. *L. P.*

Temporary contingent establish-

1939. It is so injurious to the service that men, who have been dismissed for misconduct from one department, should be considered eligible for re-employment in any other department, that such practice must be entirely discontinued. It is a wholesome check upon negligence and dishonesty for the servants of government clearly to understand that probity and diligence are the only means of retaining employment under government. Despatch of court of directors, No. 27, July 10, 1850 in C. O. Sup. Pol. *L. P.* No. 11 of 1850. C. O. No. 46 of vol. 4. *L. P.*

Rules for employment of officers dismissed.

1940. The foregoing rule was not intended to apply to cases of inaptitude for some particular branch of occupation, to which a native servant may have been originally appointed, and from which it may have been necessary on that account only to displace him. C. O. Sup. Pol. *L. P.* No. 12 of 1851. C. O. No. 75 of vol. 4.

1941. The countersignatures by civil officers of plans and other documents relating to public works, is not to be deemed as implying a tacit approbation or confirmation of the statements contained in the documents to which they are affixed. A separate heading is to be introduced in all documents requiring countersignature for the remarks, if any, of civil functionaries, and when they have none to make for the simple record of the fact: but such papers are not to be detained unnecessarily; and, for the purpose of ascertaining upon whom the blame of delay should rest, the executive engineers are to be required invariably to note the dates of despatch, and civil officers those of receipt and return. C. O. No. 222 of vol. 3. *L. P.*

Countersignature by civil officers of plans relating to public works.

1942. In the case of delays in the execution of repairs and alterations of public buildings, it is the duty of the magistrate, or other public officer to whose department the work belongs, to report the circumstances to government, in order that measures suitable to the exigency of the case may be taken. C. O. No. 253 of vol. 1.

Magistrate to report delays in the repairs of public buildings.

Use of circuit houses.

1943. The commissioners of revenue and circuit, [and executive officers when on duty at stations not their head quarters], are allowed to occupy the circuit houses when not required by officers holding criminal sessions. The session judge may also authorize the temporary occupation of those houses by persons employed on the public service, under the express condition that they uniformly vacate them when required for the above-mentioned officers. This indulgence is not to be extended to persons wishing to occupy cutcherries or any other public buildings in the judicial department, and the magistrates are strictly prohibited from allowing any individuals to occupy such buildings for their personal accommodation. On the occurrence of any extraordinary emergency which appears to warrant a temporary exception from this rule, the magistrates are to apply for the previous sanction of government through the session judge, explaining the cause of the emergency, and specifying the period for which the indulgence is solicited. C. O. No. 196 of vol. 1.

Circuit houses are in the custody of the magistrates.

1944. The custody of the circuit houses at out-stations, when not in use, remains with the magistrates who are to arrange for the purpose from the general establishments at their disposal. C. O. No. 1573, Nov. 20, 1855. *H. P.*

No more circuit houses to be built.

1945. It was determined by government in 1829 not to build circuit houses at stations, where they had not then been erected ; and commissioners of circuit were directed to find their own accommodations at such places. C. O. No. 35 of vol. 2.

Survey of buildings before purchase.

1946. No building is to be purchased for public purposes without the previous survey and report of the executive officer of the district. Extract from despatch of the court of directors No. 13 of 1849 in C. O. Sup. Pol. *L. P.* No. 6 of 1849.

Thatched houses.

1947. No thatched houses are to be erected contiguous to public buildings without a reference to the officers of the department under whom such buildings may be. C. O. Sup. Pol. *L. P.* No. 2 of 1851.

Documents and information obtained officially not to be communicated to individuals without the consent of government.

1948. Documents and papers, which have come into the possession of officers officially, are in no case to be made public, or communicated to individuals, without the previous consent of the government to which alone they belong. The officer in possession of such documents and papers can only legitimately use them for the furtherance of the public service in the discharge of his official duty ; and it is to be understood that the same rule which applies to documents and papers, applies to information of which officers become possessed officially. Govt. Notification, August 30, 1843.

The superintendent of police will take notice of any infringement of this rule.

1949. The superintendent of police will, under the above notification, bring to the notice of the government all instances in which he concludes that information procured officially has been afforded to public journalists, or the editors of periodical publications, by the officers employed in the police or thuggee departments. C. O. Sup. Pol. *L. P.* No. 11 of 1844.

Police notifications to be sent to the vernacular gazettes.

1950. Public notifications of general importance should be sent for publication to the vernacular gazettes, as the best means of giving them a wide currency among the natives. C. O. S. D. A. November 19, 1841.

SECTION II.

OF STAMPS.

1951. Duties on law papers are to be levied at the rates and in the manner prescribed in the following schedule B; and no papers are to be filed, exhibited, received, or admitted in any court of judicature, of the description stated in the schedule to require a stamp, unless the same is duly stamped. Reg. X. 1829, sect. 17.

Stamps required
for law papers.

1952. Bail-bonds, mochulkas, recognizances, security-bonds, (*hazir* or *fial zamin*) whether of specified amount, or with a penalty of a specific sum of money, or of indefinite amount, when furnished and filed under special order of a court of justice, civil or criminal, or of any officer exercising judicial powers,—are to be charged as petitions to the court or authority ordering the same.—*Exemption.* Mochulkas taken on the release of prisoners from the foudjaree jail; and mochulkas and recognizances taken from prosecutors and witnesses to secure attendance at criminal trials. Reg. X. 1829, sched. B, art. 1.

Bail-bonds, mo-
chulkas, security-
bonds.

1953. Security-bonds taken by police officers are to be drawn out on plain paper. Const. No. 710.

Security-bonds
taken by police
officers.

1954. Copies of judicial proceedings, of accounts, statements, reports, or the like, filed on record and taken out for use or reference, or when left on proceedings in place of originals withdrawn—are to be charged per sheet, 8 annas. Each sheet is to be of a size not exceeding that fixed for copy paper (No. 3 of the stamp office), and is to be written on one side thereof only. Reg. X. 1829, sched. B, art. 3.

Copies.

1955. Under the rules laid down in this schedule, both the applications for copies, and the copy itself, are to be on stamped paper; but the stamp assigned for the application is not in every case to be of the same value as that required for the copy. Const. No. 773.

Both the applica-
tion and the copy
must be on stamped
paper.

1956. Mokhtarnamahs, wakalutnamahs, and other powers, required to be filed for the conduct of suits, or of proceedings of any kind, pending before the native courts of judicature—are to be charged as prescribed for petitions presented to those courts.—*Exemption.* Mokhtarnamahs executed by native officers and soldiers, belonging to the regular corps on the military establishment of the presidency of Fort William. Reg. X. 1829, sched. B, art. 6.

Mokhtarnamahs.

1957. Petitions, durkhasts, and applications, in relation to matters pending before the undermentioned authorities in their official capacities, when not otherwise specified or provided for in the schedule, are to be charged—if addressed to a magistrate or joint magistrate, per sheet, 8 annas;—if to a commissioner of circuit or session judge, one rupee;—if to the nizamat adawlut, per sheet, two rupees.—*Exemptions.* All charges and informations respecting crimes not bailable by the regulations. Petitions from prisoners, convicts, persons under examination, or otherwise in duress, or under restraint of the court or its officers. Petitions of appeal presented to magistrates against chokeedaree assessment. Communications made to magistrates in regard to police matters not intended for record. Reg. X. 1829, sched. B, art. 7.

Petitions.

How far petitions may be received on unstampt paper.

1958. Only such petitions on unstampt paper, as are allowed by the regulations, should be filed on record: and, as a general rule, petitions required to be presented on stamp paper should not be read, unless so presented; but the magistrates may exercise their discretion in particular cases, where sufficient reason appears for the petition not having been presented on the required stamp paper. Const. No. 247.

If the matter cannot be comprised in one sheet.

1959. When the whole matter of a petition of plaint or appeal cannot be comprised in a single sheet of stamp paper, the additional sheets need not be on stamp paper. Const. No. 870.

How far prisoners may petition on unstampt paper.

1960. The above exemption in favor of persons under duress is to be construed to allow prisoners confined under civil process to petition on plain paper only in matters relating to their treatment in jail; and persons confined under criminal process, in matters relating to their treatment in jail, and the case in which they are confined. C. O. S. D. A. No. 17, May 28, 1830.

Razeenamahs.

1961. Razeenamahs, rafânamahs, sulhnamahs, or the like, that is to say—any written application, whereby, or according whereunto, a suit pending in a civil court is to be adjusted, or is capable of adjustment without argument in court, and award of the presiding judge, or other officer,—are to bear the stamp required for a pleading (a) in the court wherein it is filed. Reg. X. 1829, sched. B, art. 10.

Applications for payment of money deposited in court.

1962. Applications for the payment of money deposited in court must in every case be made on stamp paper as a record, unless a specific order has at the same time been passed for the payment of the amount. Const. No. 1093.

Size of stamp paper to be used under the above rules.

1963. It is competent to judicial officers, subject of course to the control of the sudder court, to lay down as a rule of court, or of their respective cutcherries, the size and description of paper to be used for petitions, or for other documents and records of their office, when there is no provision on the subject in the regulations for the department. Under this rule it is directed that the size No. 4 of the stamp office is to be that used for the purposes specified in the articles quoted above from schedule B. Reg. X. 1829. C. O. S. D. A. No. 56, August 10, 1832.

Rules regarding destruction of filed stamp papers.

1964. The following rules are to be observed in regard to filed stamps. All stamps filed, and not liable to be returned, are to be punched. In old cases the duty is to be performed by the serishtadar of the zillah court, or magistrate's office, but under the supervision of the judge or magistrate. In pending cases, the punching is to be effected by the same officer after decision, and before consigning them to the record office. Stamps which may be now filed, will be punched by the serishtadar or other officer receiving them; and judges, and magistrates, joint, assistant, and deputy magistrates of all grades, when signing the order for filing are to see that the rule is observed. Blank stamps, which are filed to make up for deficient value of any petition, are to be destroyed by the judge or magistrate, and a certificate of the fact is to be endorsed on the principal stamp after decision of the case, and before consigning it to the record office. C. O. No. 94 *W. P.* and No. 98 *L. P.* of vol. 4.

(a) The only pleadings in criminal courts are petitions: the stamp therefore required in the magistrate's and inferior courts must be eight annas.

BOOK II.

OF THE POLICE AND MINISTERIAL OFFICERS, LANDHOLDERS, AND JAIL.

CHAPTER I.

OF THE SUPERINTENDENTS OF POLICE.

1965. A superintendent of police was first appointed, under Reg. X. 1808, for the divisions of Calcutta, Dacca, and Moorshedabad ; and under Reg. VIII. 1810 similar arrangements were adopted in Patna, Benares, and Bareilly. But these offices were abolished by sect. 7, Reg. I. 1829, because it appeared “ expedient and necessary to place the magistracy and police, and the collectors and other executive revenue officers, under the superintendence and control of commissioners of revenue and circuit, each vested with the charge of such a moderate tract of country, as might enable them to be easy of access to the people, and frequently to visit the different parts of their respective jurisdictions.” Subsequently, under Act XXIV. 1837 the governments of the Bengal presidency were empowered to appoint superintendents of police for their respective territories, or for any parts thereof, and in such cases the commissioner of revenue was to cease to exercise any powers in regard to the magistracy and police. At present there is no superintendent of police in either the Lower or the Western provinces ; but the commissioners of revenue and circuit exercise all the powers, with which the superintendents of police have been invested, by the above-mentioned and other regulations, under the following rules.

Appointment

1966. The primary object of the appointment of the superintendents of police being the apprehension of dacoits, kazzaks, thugs, budhucks, and other descriptions of public offenders, guilty of the commission of robberies and other crimes by open violence, they are from time to time to proceed into the different zillahs comprised within the limits of their jurisdiction, according as they may deem necessary and proper, or as the government may direct :—provided, however, that this is not to be construed to prevent them from exercising the full powers of their office throughout the whole extent of their jurisdiction, in whatever part of it they may at any time be resident.(a) Reg. VIII. 1810, sect. 4.

He is from time to time to proceed to the different zillahs in his jurisdiction.

(a) Commissioners are expected to visit the interior of the several districts under their authority, during the temperate season of the year ; and must be prepared at all times to proceed to any part of their jurisdiction, when circumstances appear to require their presence. Govt. Order, July 7, 1829.

To keep himself constantly informed of the actual state of the police.

1967. It is the duty of the superintendent to keep himself constantly informed, by communication with the local magistrates, with the darogahs of police, and with the zumeendars and others, and by every other practicable means of inquiry, of the actual state of police, in the several zillahs comprised within his jurisdiction; and to submit to government any information respecting the prevalence of public offences in any of those zillahs, or on other points appearing to him to require the interposition of government. Reg. VIII. 1810, sect. 5.

His process how to be executed.

1968. The superintendent of police is empowered to execute his warrants, and other process, in the form prescribed by the regulations, either by means of his own officers, or through the local authorities, as he judges proper. The magistrates, and all persons acting under them, are required to aid and support the officers of the superintendent of police in the execution of any warrant or other process issued by him, under his seal and signature; and resistance to any process so issued is punishable in like manner as provided by the regulations for resistance to the process of a magistrate. Reg. X. 1808, sect. 6.

Resistance to it how punishable.

Sentence may be passed by himself.

1969. The superintendent of police is competent to pass sentence against any person, amenable to his jurisdiction, who is convicted before him for resistance to the execution of a legal process issued by him under the above rule; and also against all persons apprehended by and proved guilty before him of any offence, punishable under the existing regulations by the magistrates. Const. No. 98.

Concurrent jurisdiction with magistrates.

1970. The superintendent of police is to possess a concurrent jurisdiction with the several magistrates within his jurisdiction. Reg. X. 1808, sect. 5.

He may certify his sentences to the magistrate for execution.

1971. The superintendent is competent to certify all sentences passed by himself on offenders, in cases in which such sentences cannot conveniently be carried into effect under his immediate directions, to the magistrate of the district in which the offence has been committed; and the magistrate, to whom such application is addressed, is authorized and required to carry the sentence of the superintendent into execution, in the same manner as if it had been passed by the magistrate himself. Reg. III. 1812, sect. 5, cl. 1.

So, in commitments made by him to the sessions; and the magistrate is to superintend the conduct of the prosecution.

1972. In cases in which persons are committed or held to bail by the superintendent of police for trial before the sessions court, and he is not conveniently able to superintend the conduct of such prosecutions himself, it is competent to him to certify the order regarding the trial to the magistrate of the district in which the offence is alleged to have been committed; and the magistrate, on receipt of such application, is then to superintend the conduct of the prosecution before the sessions court in the same manner as if the accused party had been committed or held to bail by the magistrate himself. Reg. III. 1812, sect. 5, cl. 2.

But the superintendent may carry his own sentences into effect, or superintend the prosecution of his own commitments.

1973. Provided, however, that nothing contained in the preceding clauses is to be construed to prevent the superintendent of police from causing sentences passed by him under the regulations being carried into effect under his immediate directions, or from superintending the conduct of prosecutions against persons committed or held to bail by him for trial before the sessions court, in cases in which he deems it advisable to execute those duties himself. Reg. III. 1812, sect. 5, cl. 3.

1974. Should the superintendent of police, on visiting any district of his jurisdiction, deem it advisable to take under his immediate charge, for the purpose of exercising temporarily the powers of magistrate, any police thana or thanas of such district, he is to make the necessary application for that purpose to the local magistrate, who is to comply with all requisitions to that effect from the superintendent of police without awaiting any specific orders from government. Reg. XVII. 1816, sect. 12, cl. 1.

He may take charge of any thanas.

1975. In such case the superintendent of police is to exercise the same powers as are vested in the magistrates with regard to the removal or suspension of any of the police officers attached to the thanas, of which the superintendent takes charge under the foregoing clause; and the magistrate is not authorized, without the special sanction of government, to exercise any concurrent jurisdiction in such thana or thanas, except in the cases provided for in sect. 16, Reg. XXII. 1793; sect. 15, Reg. XVII. 1795; and sect. 16, Reg. XXXV. 1803 [*i. e.* cases in which a magistrate empowers his police to apprehend persons in another jurisdiction, when the offence was committed within his own jurisdiction, or when the offender was actually within his jurisdiction at the time when the charge was preferred against him: *v. para.* 188]. Reg. XVII. 1816, sect. 12, cl. 2.

In such case he is to exercise the powers of magistrate therein; and the magistrate of the district has only the same concurrent jurisdiction therein, as he has in other zillahs.

1976. The superintendent of police, in his capacity of magistrate, is equally subject to the control of the sessions court with other magistrates; and warrants and orders of the sessions court may be issued to him in like manner as they are usually issued to the magistrates. Const. No. 82.

In his capacity of magistrate he is subject to the sessions judge as a magistrate.

1977. A commissioner of circuit was informed that he was not competent, in that capacity, to fine a person under sect. 5, Reg. VIII. 1825 [which provided for the punishment of persons bringing false and malicious charges against an European public officer, but is repealed by Act XXVI. 1839]; but that, with regard to a complaint against the nazir and peons of the magistrate's office, he possessed, as superintendent of police, the powers of magistrate in the punishment of false and malicious complaints. Const. No. 754.

Power to punish for false and malicious complaints.

1978. The superintendent of police appointed under this Act is to exercise all the powers vested in the commissioners of circuit by sect. 3, Reg. I. 1829 [*i. e.* the powers formerly vested in the courts of circuit] in regard to the appointment, suspension, and removal of any ministerial or police officer, subordinate to any magistrate or joint magistrate; and such orders of the superintendent of police are not open to revision by the nizamat adawlut. Act XXIV. 1837, sects. 4 and 6.

Powers in regard to the appointment, suspension, and removal of ministerial and police officers.

1979. The superintendents of police are competent to remove or appoint any ministerial officer employed upon their respective establishments, whenever they see sufficient cause; and all such appointments and removals are final. Reg. XVII. 1816, sect. 10.

1980. The superintendent of police is authorized to make an application to be furnished with a copy of proceedings in trials by the sessions courts, and it is incumbent on those courts to comply with such applications. Const. No. 141.

He may require copies of the proceedings in the sessions courts.

1981. The superintendent of police is authorized to correspond, either publicly or secretly, with the officers of government in every department, upon subjects connected with

All public officers are to co-operate with the superin-

tendent, and to afford him every assistance.

the discharge of the duty committed to him :—and all public officers are directed to furnish the superintendent with any information they may possess upon such subjects ; as well as generally to co-operate with him, and to afford every assistance in their power to enable him to accomplish the objects of his appointment. Reg. X. 1808, sect. 7.

1982. Magistrates are enjoined to afford every aid and co-operation to the superintendent of police, and his officers, in the discharge of the duties vested in them ; and the different provincial courts are, in like manner, required to give every support to the superintendent and his officers, which is consistent with the principles of justice and the general regulations. Reg. VIII. 1810, sect. 6.

Magistrates to send weekly reports of heinous offences under investigation.

1983. Magistrates are to communicate freely with the superintendent of police, either privately or publicly, on the subject of gang-robbery ; and are to make weekly reports in English of the progress made in the investigation of any dacoity attended with murder, torture, wounding, or other aggravating circumstances. This rule is also applicable to all murders, homicides, burglaries and thefts attended with murder or by drugging, and to affrays with homicides. C. O. Sup. Pol. *L. P.* No 2 of 1839, and No. 11 of 1851.

He is to communicate immediately with government.

1984. The superintendent of police is to communicate immediately with government, through the secretary, upon all matters connected with his office ; and is to act under such instructions as are, from time to time, transmitted for his guidance by the order of government. Reg. X. 1808, sect. 8.

All correspondence of the magistrates with government regarding matters of police is to be conducted through the superintendent.

1985. All correspondence of the magistrates relative to the strength, distribution, or expense of the police establishments, whether temporary or permanent, or respecting any alteration of police stations, or of their local boundaries, and generally all correspondence of those officers with the government which has reference to arrangements on matters of police, is to be conducted through the office of the superintendent of police. Reg. XVII. 1816, sect. 13.

The superintendent is under the general authority of the nizamat adawlut.

1986. The superintendent of police is also to be considered under the general authority of the nizamat adawlut, in all matters relative to the police ; and upon any point not expressly provided for by the regulations, or by the orders of government, is to be guided by the instructions of that court. Reg. X. 1808, sect. 9.

Annual statements.

1987. The annual statements for the superintendent of police are to be prepared and despatched so as to reach his office by the end of January at latest. C. O. Sup. Pol. *L. P.* No. 11 of 1851.

CHAPTER II.

OF THE OFFICERS OF POLICE.

SECTION I.

OF THE POLICE ESTABLISHMENTS.

1988. The police of the country is under the exclusive charge of the officers appointed to the superintendence of it on the part of government. The landholders and farmers of land, who were bound to keep up establishments of thanadars and police officers for the preservation of the peace [previous to December 1792, *v. para.* 31], are prohibited entertaining such establishments. (a) Reg. XXII. 1793, sect. 2.

Lower Provinces.

The charge of the police vested in whom.

1989. The magistrates were required to divide their respective zillahs, including the rent free lands, into police jurisdictions: each jurisdiction to be ten coss square, except where local circumstances rendered it advisable to form all or any of the jurisdictions of greater or less extent: the guarding of each jurisdiction to be committed to a darogah, or superintendent, with an establishment of officers: the darogahs with their establishments to be stationed in the centre of their respective jurisdictions unless for special reasons it was thought expedient in particular instances to fix them in any other situation; and the jurisdictions to be formed in such manner as to bring the principal towns, bazars, and gunjes, in the centre of them, that the police establishments might serve for the protection of these principal places, as well as the circumjacent country: the police jurisdictions to be numbered, and to be named after the places in which the darogahs and their establishments were stationed. Reg. XXII. 1793, sects. 4 and 5.

The division of the zillahs into police jurisdictions.

Such jurisdictions numbered and named;

1990. The magistrates are not to change the names or numbers of the jurisdictions, nor to alter the limits of them, without the sanction of government. Reg. XXII. 1793, sect. 5.

and the names and numbers are not to be changed.

1991. The magistrates of the cities of Patna, Dacca, and Moorshedabad, were required to divide the cities and the places adjacent, subject to their respective jurisdictions, into

The division of the cities into wards.

(a) This prohibition does not extend to any district included in the jurisdiction of the magistrate of the Jungle Mahals, the police of which, subject to the control of the magistrate, has been or may be committed to the zumeendar, or to the manager of a zumeendaree. It is also declared inapplicable to any landholder, or to any farmer or manager of land, whom government authorizes to entertain an establishment of police officers, whether in the Jungle Mahals, or in any other mahal or district whatever. In such cases particular rules are provided for the zumeendars; and government has the power of extending them, either in whole or in part, to any other mahals, the police of which is entrusted to a zumeendar, or other landholder, or to a farmer or manager of land. See sects. 5 and 6, Reg. XVIII. 1805. Such zumeendars are to be guided also by the rules of Reg. XX. 1817, as far as they are applicable to their duties, as chief police officers. See cl. 3, sect. 38, Reg. XX. 1817 (*para.* 1997).

wards; each ward to be guarded by a darogah with a proper establishment. Reg. XXII. 1793, sect. 26.

The names and numbers of the wards are not to be changed.

1992. The wards were to be numbered and named; and the magistrates are not to change the names or numbers of the wards, or alter their limits, without the sanction of government. Reg. XXII. 1793, sect. 27.

Rules for patrolling the wards throughout the night.

1993. The jemadars of the establishments, with one half of the establishments, are to patrol their respective wards without intermission from sunset until 12 o'clock at night. The darogahs with the other half of their establishments are to patrol their respective wards without intermission from 12 o'clock at night until daylight. The patrols are to move about as silently and with as little noise as possible, that thieves and other disorderly persons may never be apprized of their approach. The patrols of the several wards are to be furnished with a singharah or horn, which they are to sound when they meet with robbers or other persons guilty of a breach of the peace, and have occasion to give the alarm to the other patrols or to the inhabitants of the ward that they may co-operate to the apprehension of the offenders, but not otherwise. Reg. XXII. 1793, sect. 29.

Patrols to be furnished with horns.

Mahalladar and mahalladarin appointed to each ward.

1994. To assist the darogahs in obtaining the earliest intelligence of any robbers or other offenders that are concealed, or have taken up their residence within their respective wards, a mahalladar and mahalladarin are to be appointed to each ward, subject however to the orders of the darogahs, to whom they are to convey immediate information of any offenders that are found in their respective wards. Reg. XXII. 1793, sect. 30.

City police to be guided by Reg. XX. 1817, in discharge of general duties.

1995. The police officers appointed in the cities and towns are to be guided, in their discharge of the general duties of police, by the rules prescribed in this regulation for the guidance of the darogahs of police, as far as the same are applicable, and in the special police duties of the cities and towns by the rules in force which relate to the police of the cities and towns. Reg. XX. 1817, sect. 34.

North West Provinces.

The charge of the police vested in whom.

1996. The charge of the police of the country, throughout the province of Benares, the ceded and conquered provinces, and Bundelcund, is vested, subject to the control of the magistrates, in the officers who are appointed to the superintendence of it on the part of government, and subordinate to them in the landholders, and farmers of land, who by their engagements are responsible for the preservation of the peace within the limits of their respective estates and farms. Reg. XIV. 1807, sect. 4.

Zumeendars entrusted with the police are to be furnished with copies of, and to obey the rules of, Reg. XX. 1817.

1997. Copies of Reg. XX. 1817 are to be furnished to all zumeendars, or other landholders or managers of estates, entrusted with the management of the police; and such zumeendars, or other landholders or managers, are to observe the rules therein prescribed as far as the same are applicable to their duties as chief police officers. Reg. XX. 1817 sect. 33, cl. 3.

The division of the zillah into police jurisdictions,

1998. The several zillahs in those provinces were to be divided into compact police jurisdictions, including indiscriminately the estates of *huzoor tuhseel* landholders, and of *mahals* paying revenue through a *tuhseeldar*, as well as *lakhiraj* lands of every denomination held exempt from the police assessment. Reg. XIV. 1807, sect. 5, cl. 1.

1999. The police jurisdictions are of two descriptions. First, such as are established at the station where the civil court is held, and which are to be denominated the “sudder police jurisdictions.” Secondly, such as are established at any place not being the station where the civil court is held, and which are to be denominated the “mofussil police jurisdictions.” Reg. XIV. 1807, sect. 5, cl. 2.

of two kinds ;
sudder, and mo-
fussil.

2000. The sudder police jurisdiction was to comprise the city or town, at which the civil court was held, together with such part of the suburbs and environs, as it was judged expedient to place under the superintendence of a cutwal with an establishment of darogahs, jemadars, burkundazes, and chokeedars or other watchmen, proportionate to the extent and population of the jurisdiction. Reg. XIV. 1807, sect. 6, cl. 1.

Sudder police
jurisdiction to com-
prise what, with
what establish-
ment.

2001. The mofussil police jurisdictions were respectively to comprise a considerable town or gunj, at which the superintendent of the jurisdiction was to be stationed, together with such part of the adjacent country as it might be deemed advisable to place under the superintendence of a darogah, with an establishment of jemadars, burkundazes, chokeedars or other watchmen, proportionate to the extent and population of each jurisdiction. Reg. XIV. 1807, sect. 6, cl. 2.

Mofussil police
jurisdiction to com-
prise what, with
what establish-
ment.

2002. In proposing a distribution of mofussil police jurisdictions, and the requisite establishments for them, the magistrates were required to attend as much to the population, and number of towns, villages, and other inhabited places, as to the extent of country ; but the latter was in no instance to exceed ten coss square for any one police jurisdiction, unless peculiar local circumstances appeared to require it. Reg. XIV. 1807, sect. 6, cl. 3.

Not to exceed
10 coss square.

2003. If the principal town or gunj, included in any mofussil police jurisdiction, from its extent and population appeared to require a cutwalce establishment ; or if it appeared expedient in any instance to include more than one considerable town or gunj within a mofussil police jurisdiction, and to station a naib darogah, or jemadar, with a subordinate establishment of burkundazes, chokeedars, or other watchmen, at the town or gunj, not the station of the darogah of the jurisdiction, the magistrate was to propose such an arrangement. Reg. XIV. 1807, sect. 6, cl. 4.

Subordinate di-
vision and esta-
blishment in cer-
tain cases.

2004. The police jurisdictions were to be numbered, and named after the places at which the superintending officers were stationed. The names, numbers, limits, or establishments of such several jurisdictions are not to be changed without the previous sanction of government. Reg. XIV. 1807, sect. 7, cl. 1.

The numbers,
names, limits, and
establishments,
not to be changed.

2005. It is at all times competent to government to order the discontinuance of any police jurisdiction, or establishment, which appears unnecessary ; or any alteration therein which is deemed expedient. Reg. XIV. 1807, sect. 7, cl. 2.

Government may
make any altera-
tion.

2006. The city or town constituting with its suburbs the sudder police jurisdiction was to be divided into wards ; each ward to be guarded by a police darogah with a jemadar and an establishment of burkundazes, chokeedars, or other watchmen ; the several darogahs to be under the superintendence of a cutwal, and the whole under the immediate control of the magistrate. Reg. XIV. 1807, sect. 11, cl. 2.

The division of
the sudder police
jurisdiction into
wards.

Watchmen how
to be stationed
therein.

2007. The chokeedars and other watchmen are to be stationed by the cutwal, as the magistrate directs; and are particularly to watch the entrances of streets and passages, places where spirituous liquors are sold, and any places where numbers of people occasionally assemble; or where from any circumstances there is reason for special vigilance to prevent a breach of the peace, or to apprehend the persons by whom it is broken. Reg. XIV. 1807, sect. 11, cl. 3.

Rules for patrol-
ing the wards
throughout the
night.

2008. The jemadars of the several wards with half of the establishment of burkundazes, and the darogahs with the other half of their establishments, are to patrol their respective wards without intermission; the one from sunset until 12 o'clock at night; the other from 12 o'clock at night till daylight. The patrols are to move about with as little noise as possible, that thieves and other disorderly persons may not be apprized of their approach. The patrols of the several wards, and such part of the stationary watchmen as the cutwal appoints, are to be furnished with a singhara or horn, which they are to sound when they meet with robbers or other persons guilty of a breach of the peace, and have occasion to give the alarm to each other, or to the inhabitants of the ward, that they may co-operate for the apprehension of the offenders. The cutwal is to be careful that the stationary watchmen, and the darogahs and their officers, perform the essential duties prescribed in this clause regularly and properly; and is to report to the magistrate every instance in which they are guilty of negligence or misconduct in the discharge of them. Reg. XIV. 1807, sect. 11, cl. 4.

Patrols to be
furnished with
horns.

Duties of the
mahalladar and
mahalladarin of
each ward.

2009. To assist the darogahs in obtaining the earliest intelligence of any robbers, or other offenders, who are concealed or have taken up their residence within their respective wards, the mahalladar and mahalladarin of each ward are to be subject to the orders of the darogah; to whom they are to convey immediate information of any offenders who are found in their respective wards. It is also the duty of the bhatiaras, or other persons in charge of the public serais, and of the ghât manjees, to deliver in to the cutwal's office or to the darogah of the ward, daily reports of the arrival and departure of travellers, and of all persons of suspicious appearance. Reg. XIV. 1807, sect. 11, cl. 5.

Duties of the
bhatiaras, &c.

Private watchmen.

2010. All private watchmen entertained by individuals for guarding their houses, shops, or other premises, within the cutwalee jurisdiction, are required to act in concert with the officers of police in maintaining the peace; and are declared subject to the orders of the cutwal, and of the darogahs of their respective wards, in all matters relative to the police. If such watchmen are found deficient in performing the duties required of them, they are to be dismissed at the requisition of the magistrate, who is also empowered to see that none but proper persons are appointed in their stead. Reg. XIV. 1807, sect. 11, cl. 6.

Charge of police
may be entrusted
to tuhseeldar, or
landholder, by go-
vernment.

2011. Government may grant the full powers of a mofussil police darogah to a tuhseeldar, landholder, or farmer; or may commit the charge of the police to any other person as a temporary arrangement. Reg. XIV. 1807, sect. 17.

Magistrate may
report if he wishes
for such special ar-
rangement.

2012. The magistrates are to report for the information of government any instances within their respective jurisdictions, in which they think it advisable to adopt any special

arrangement under the above provision, stating fully the circumstances which require it and the particulars of the arrangement proposed. Reg. XIV. 1807, sect. 18.

2013. The cutwal and other police officers appointed in the cities and towns are to be guided, in their discharge of the general duties of the police, by the rules prescribed in this regulation for the guidance of the darogahs of police, as far as the same are applicable, and in the special police duties of the cities and towns by the rules in force which relate to the police of the cities and towns. Reg. XX. 1817, sect. 34.

City police to be generally guided by Reg. XX. 1817.

2014. The whole force under each magistrate is to be considered and systematically regulated as a force for the entire district. A list of *all* its members should be kept in English in a book, and should form one of the fixed records of the magistrate's office. Every entry of employment or promotion should be made in this book under the orders of the magistrate himself, or of the officer in charge of a sub-division to whom such authority may be delegated by the magistrate,—with particulars of the caste, parentage, residence and qualifications of the party to whom it refers. On the first week of each quarter the book should be inspected by the magistrate;—a note made of marked good or bad conduct on the part of members of the force;—and orders given, where they may be found to be called for, regarding the distribution of the whole body of the police, so as to preclude the possibility of any part of the force being regarded as attached only to particular thanas, or of the men in any grade being kept too long where they may be likely to form injurious local connections. Govt. Order *W. P.* No. 1994 A, Sept. 11, 1855.

Book to be kept of all police officers,

and examined every quarter ;

and the police officers should be so distributed as to prevent their being regarded as attached to a particular thana.

2015. Means might readily be taken by the several magistrates to have a certain number both of the police sowars and of the thana burkundazes and tuhseel chaprasis trained to the use of fire-arms, so that a magistrate may have some body of men under his immediate command, on whom considerable dependance could be placed in case of any local breach of order. And on application from any magistrate who may state his wish to make the experiment, the lieutenant governor will be prepared to authorise the issue upon indent of muskets to the number of 50 (besides those issued to the jail guard) with ammunition on the same scale as is now given to the jail guard : 20 percussion pistols being also added for the use of picked men of the sowar force,—if they can be conveniently spared from the arsenals at Allahabad, Agra, or Delhi. Govt. Order *W. P.* No. 1994 A, Sept. 11, 1855.

The sowars, burkundazes, and chaprasis, are to be trained to the use of fire-arms.

2016. Proposals for employing a limited number of the district establishments, exercised in the use of fire-arms, for all duties of guard, will be authorised by the lieutenant governor, when a magistrate may have maturely considered the details of such a scheme and may show that he has sufficient means for carrying it into effect. Govt. Order *W. P.* No. 1994 A, September 11, 1855.

Employment of such persons after training.

2017. Where a magistrate may wish to make the experiment of training the burkundazes of the sudder station, the lieutenant governor will authorise the issue of uniforms of the prescribed pattern as in the case of burkundazes on the grand trunk road. Govt. Order *W. P.* No. 1994 A, September 11, 1855.

When burkundazes at the sudder station have been trained, they may be supplied with uniforms.

2018. It is competent to government to authorize any tuhseeldar or tuhseeldars [in the ceded and conquered provinces and in Benares] to exercise the powers vested by the existing

Tuhseeldars.
Powers of darogah may be vested

by government in
tuhseeldars in N.
W. provinces.

regulations in darogahs of police, and to determine the local limits of their police jurisdictions, within which all officers of police, including the thana and village police establishments, are to be subordinate to and subject to the control of the tuhseeldar in his capacity of chief police thanadar. Reg. XI. 1831, sect. 2. Act. XVI. 1854, sect. 3.

Darogahs of po-
lice to be subject
to tuhseeldars.

2019. Whenever any tuhseeldar shall have police jurisdiction under these provisions, every darogah of police hereafter appointed within the local limits of the police jurisdiction of such tuhseeldar, shall be subordinate to, and subject to the control of, such tuhseeldar, in his capacity of chief police thanadar. Act XVI. 1854, sect. 2.

In such cases
rank and functions
how to be settled

2020. The darogah and tuhseeldar are competent, with the sanction of the magistrate, to make such disposition of the existing police establishments, in modification of sect. 4, Reg. XX. 1817 [which defines the relative rank and functions of police officers], as is most conducive to the public interests; but, with this exception, the whole of the rules contained in the above regulation are to be held applicable to the tuhseeldars, who are constituted police officers under this regulation. Reg. XI. 1831, sect. 4.

Reg. XX. 1817
is applicable to
tuhseeldars in such
cases.

In such cases the
tuhseeldar's estab-
lishments may be
employed in mat-
ters of police; but
police officers are
not to be employed
in revenue matters.

2021. The tuhseeldars, who are vested with the powers of darogahs under this regulation, are authorized to employ, when necessary, in aid of the regular police establishments, any chaprasis or other persons entertained on their fixed tuhseeldar's establishments; and revenue officers, when so employed, are to be guided in the discharge of their police duties by all the rules in force for the guidance of police officers. But the fixed thana establishments are not to be employed in the collection of the land revenues, or in other revenue duties, except in cases of distraint for arrears of rent or revenue, or such other occasions as by the regulations in force are now authorized. Reg. XI. 1831, sect. 5.

Such arrange-
ments how to be
publicly notified.

2022. Whenever the government sees fit to carry into effect this arrangement in any district or part of a district, a statement is to be drawn out specifying the number and extent of the several police and revenue jurisdictions, the names and numbers of the officers attached to them, and the head quarters or thanas, and the outposts of the several divisions: this statement is to be drawn out in English and the vernacular dialects, and suspended in a conspicuous place in the cutcherry of the collector and magistrate at the sudder station, and is to be published by proclamation throughout the district. Reg. XI. 1831, sect. 6.

Tuhseeldars re-
moved to another
district do not car-
ry the powers with
them.

2023. The enforcement of Reg. XI. 1831, in a certain pergunnah or district, or the investiture of the tuhseeldars in certain pergunnahs, or in a whole district, with police powers under these provisions, refers to the locality indicated, and not to the person invested. Any tuhseeldars holding office in those pergunnahs exercise the powers. Tuhseeldars exercising police powers there, when removed to other districts, do not carry the powers with them. C. O. No. 78 of vol. 4, *W. P.*

Outposts.

Magistrates may
station at outposts
a portion of the
thana establish-
ment.

2024. The magistrates are authorized to exercise the power of stationing any portion of their police thana establishments (not exceeding one-third of the entire establishment) at any chokee, village, ghaut, highway, or other place within the limits of the thana to which such establishments appertain, reporting always the particulars, as well as the grounds of the arrangement, for the information of the superintendent of police. Police officers so

stationed are to be guided by the following rules. Reg. XVII. 1816, sect. 8, cl. 1. Reg. XX. 1817, sect. 6, cl. 1.

2025. Jemadars, burkundazes, and other police officers stationed at outposts, or subordinate chokces, are to act under the control of the darogah or head police officer of the thana, to which they are attached; and are to afford their aid for the prevention of crimes, the apprehension of criminals, and generally for the preservation of the peace, and are to report to the thana all occurrences relating to matters of police, which come to their knowledge. Reg. XVII. 1816, sect. 8, cl. 2. Reg. XX. 1817, sect. 6, cl. 2.

Duties of officers so stationed.

2026. The officers of police stationed at outposts are competent to apprehend, without written charge or warrant, persons found in the act of committing a breach of the peace, or against whom a hue and cry has been raised, or who are detected with stolen goods in their possession, or who are liable to apprehension under the rules in force as proclaimed or notorious robbers, or vagrants, without any ostensible means of subsistence; but no person is to be arrested by the subordinate officers of police, except in cases of the nature above-noticed, unless under the special warrant of the magistrate, or of the darogah of the thana to which the outpost is attached. Reg. XVII. 1816, sect. 8, cl. 3. Reg. XX. 1817, sect. 6, cl. 3.

How far they may apprehend persons without a warrant from the magistrate or the darogah.

2027. Persons apprehended by the subordinate establishments of police are to be forwarded immediately to the thana to which the outpost belongs, accompanied by an explanation of the circumstances of the case, and of the causes which have led to the apprehension of the prisoner. Reg. XVII. 1816, sect. 8, cl. 4. Reg. XX. 1817, sect. 6, cl. 4.

Persons so apprehended are to be forwarded immediately to the thana.

2028. A magistrate is not authorized to call upon a zameendar to provide a building for the residence of police officers stationed upon his estate under the above rules. Const. No. 1247.

Landholders are not obliged to provide houses for such outposts.

2029. Magistrates, who have guard boats under them, are required to report annually what services have been rendered by the boats employed under them, that, whenever it appears they are useless at any station, they may be reduced or transferred to some other. Such reports are to state whether the boats have been instrumental in apprehending dacoits; whether owing to their vigilance that crime has in any instances been prevented; and generally whether robbery in the neighbourhood of their stations has comparatively ceased or diminished, from the dread of pursuit excited in the minds of the evil-disposed by their presence and known activity. C. O. No. 41 of vol. 1.

Guard boats.

Annual report to be furnished regarding.

SECTION II.

OF THE RELATIVE RANK AND GENERAL FUNCTIONS OF POLICE OFFICERS.

General duties of darogahs, and their control over the subordinate thana officers.

2030. The darogahs are to exercise a general control over the mohurirs, jemadars, and burkundazes attached to their respective thanas; it is the duty of a darogah, or other officer of police in charge of a thana, to conform to all instructions he receives from the magistrate, to whom he is subordinate; to preserve the peace within the limits of his jurisdiction; to report to the magistrate all occurrences connected with the police which come to his knowledge; to prevent, as far as possible the commission of all criminal offences; to discover and apprehend offenders; to execute process and obey all orders transmitted to him by the magistrate; and to perform such other services as are prescribed in the regulations. Reg. XX. 1817, sect. 4, cl. 1.

Rank and special duties of the mohurir.

2031. The mohurir is to be considered the second officer at a thana; and, in the absence of the darogah from his station, is to exercise the powers vested in that officer by the provisions of this regulation. It is the special duty of the mohurir to preserve the records of the thana, and to write the reports and other papers under the direction of the darogah. Reg. XX. 1817, sect. 4, cl. 2.

Rank and special duties of the jemadar

2032. The jemadar is to be considered as the third officer at a thana, and in the absence of the darogah and mohurir from the thana station, is to exercise the same powers as are vested in the darogahs by the provisions of this regulation. The jemadars, whether stationed at the thanas, or at outposts, are to act under the orders of the darogah of the division, and are to see that the burkundazes are in attendance at their posts; that their arms and accoutrements are kept in a state of efficiency; and that all prisoners and property brought to the thana are duly guarded during the time they remain under the custody of the police burkundazes attached to the station. Reg. XX. 1817, sect. 4, cl. 3.

Jemadar may have special powers.

2033. First class jemadars may be invested with the powers of a darogah by government on the special recommendation of the magistrate. C. O. Govt. W. P. No. 1849 A, August 28, 1855.

Police officers generally to obey the orders of the superintendents of police, and of the joint and assistant magistrates.

2034. The officers of police are required to aid and support the superintendents of police, and the joint and assistant magistrates, to whom they are respectively subordinate, in the execution of any process issued by them under their official seals and signatures; also to furnish those officers with every information required from them, as well as generally to obey all orders issued to them by those officers, on pain, in case of neglect or failure, of being fined, suspended, or dismissed from office, according to the provisions established by the general regulations for the punishment of offences of that description. Reg. XX. 1817, sect. 4, cl. 4.

Seal to be used by police officers.

2035. All cutwals and police darogahs are to use a brass seal of office, an inch in diameter, and made after the form described in the margin, the name of the cutwalee or thana, and the name of the city or zillah in which it is included, being engraved on the surface of the seal. Reg. XX. 1817, sect. 5, cl. 1.

Thana
of Mhow
Zillah
Tirhoot.

2036. The police burkundazes are to wear brass badges, engraved with the name of the police station, and of the district in which they are employed ; and are to be armed with a spear, a sword, and a shield ; or with a matchlock, sword, and shield ; or with a spear and matchlock ; as circumstances render expedient : they are also to be uniformly dressed in such manner as is prescribed by the superintendent of police. Reg. XX. 1817, sect. 5, cl. 2.

Burkundazes to wear a badge, arms, and uniform.

SECTION III.

OF CONCURRENT JURISDICTION OF POLICE OFFICERS.

2037. Whenever a darogah receives intelligence of any murder, gang-robbery, or other heinous crime, having occurred within his jurisdiction, the perpetrators of which have not been apprehended, he is to despatch immediate information of the occurrence to the neighbouring police darogahs, both in the district in which his thana is situated, and in the adjacent districts. Reg. XX. 1817, sect. 22, cl. 1.

Intelligence of heinous crimes to be sent to neighbouring thanas.

2038. The darogahs and other police officers are empowered, either under the warrant of the magistrate or without such warrant, to pursue persons charged with the crimes above-mentioned into the jurisdiction of other darogahs, whether subject to the same or any other magistrate ; and the magistrates, darogahs, police officers, landholders, farmers, gum-ashtas of villages, cultivators of land, and all other persons having authority or residing in the jurisdiction into which the offenders are pursued, are required to afford every assistance in their power to the pursuing officers for the apprehension of the offenders. Reg. XX. 1817, sect. 22, cl. 2.

Police officers may pursue offenders into other thanas or zillahs.

2039. It is to be understood, however, that this concurrent authority is to be exercised by the police officers only in those cases in which the crime has been committed within their own respective jurisdictions ; or, in the event of the crime having been committed in any other jurisdiction, when the offender is actually within their jurisdiction at the time the charge is preferred to them ; and it is not lawful for the darogah of one zillah or jurisdiction to issue a warrant for the apprehension of an offender, being or residing in another zillah or jurisdiction at the time of a complaint being preferred, for any crime not committed within the limits of his own jurisdiction. In such cases the complainant must apply in the first instance to the magistrate of the zillah, or to the darogah of the jurisdiction, in which the crime or misdemeanor has been committed, or in which the offender resides or is found. But should the complainant first prefer a written application to the darogah of another jurisdiction, such darogah is to record in his diary the name of the complainant, the nature of the charge, and the date on which the complainant has been referred to another darogah. The date and ground of such reference is also to be endorsed upon the application to be returned to the complainant. Reg. XX. 1817, sect. 22, cl. 3.

But this concurrent authority is to be exercised by a police officer only when the offence was committed in his own jurisdiction, or when the offender was therein at the time the charge was preferred.

Darogah how to proceed when he apprehends offenders without his own jurisdiction.

2040. Whenever the police officers employed under one magistrate apprehend offenders in the jurisdiction of another magistrate, in virtue of the powers vested in them by the preceding rules, they are immediately to deliver to the darogah of the police jurisdiction, in which the offenders are apprehended, a list of their names, and a statement of the crimes and misdemeanors with which they are charged; and the latter darogah is immediately to forward such list and statement to the magistrate to whose authority he is subject. Reg. XX. 1817, sect. 22, cl. 4.

SECTION IV.

OF APPOINTMENT AND REMOVAL.

Superintendent to keep a general register of all police establishments,

2041. A general register of all police establishments (whether permanent or temporary) which are entertained at the charge of government, is to be kept up by the superintendents of police for their respective jurisdictions, exhibiting the description, strength, distribution, and expense of all such establishments, entertained within the provinces dependent on the presidency of Fort William. Reg. XVII. 1816, sect. 2, cl. 1.

and to submit to government an annual abstract statement of the strength and expense of all descriptions of police.

2042. The superintendents of police are regularly to transmit to government, with their annual police reports, or as soon after the transmission thereof as is practicable, an abstract exhibiting a comparative view of the strength and expense of all descriptions of police entertained during the two preceding years in the several districts situated within their respective jurisdictions, together with a separate address, explanatory on the one hand of any temporary or local increase in such establishments which circumstances have rendered necessary, or suggesting on the other any further reductions in the strength of those establishments which the ameliorated state of the police, the progressive introduction of subsidiary police arrangements, or other circumstances, appear to admit. Reg. XVII. 1816, sect. 3.

Magistrates to furnish the superintendent with required information, and to conform to his suggestions.

2043. In order to enable the superintendents to furnish such annual report, the magistrates are to supply any information which they require, and are to conform to any suggestions of those officers in respect to the organization and management of such establishments, which are consistent with the tenor and spirit of the regulations. Reg. XVII. 1816, sect. 5.

The appointment and removal of police officers is vested in the magistrate;

2044. The magistrates are to exercise the power of appointing darogahs and other subordinate officers to the several police stations subject to their control; of removing them from one station to another; and of suspending and dismissing them from office in consequence of neglect, misconduct, or incapacity. Reg. XVII. 1816, sect. 7, cl. 1.

subject to the control of the superintendent of police in some districts.

2045. But in districts, in which tahseeldaree establishments are maintained subject to the authority of the collectors, the appointment and removal of police officers rest with the magistrate, subject to the orders of the commissioner of circuit, or other officer vested with the powers of superintendent of police, whose decision is final, unless the government see

reason to issue special orders on any case which may be brought to its notice.(a) Reg. XI. 1831, sect. 8.

2046. The magistrates are required to record upon their proceedings the grounds upon which any native officers are removed by them under the above provisions; and to select proper persons to fill all vacancies in the stations of such officers; and to continue in office the persons appointed, whether by themselves or by their predecessors, whilst they discharge the duties assigned to them with diligence and integrity. Reg. XVII. 1816, sect. 7, cl. 3.

Grounds of removal to be recorded. Fit persons to be selected; and not to be removed without fault.

2047. No person is to be appointed a darogah without giving security for his appearance in the amount of 1000 rupees, himself in 500, and two responsible persons in 250 each. *Beng. Reg. XXII. 1793, sect. 6. Ced. Prov. Reg. XXXV. 1803, sect. 24.*

Security may be taken from darogahs;

2048. Under the orders of government, the foregoing provision is not to be put in force in Bengal. C. O. Sup. Pol. *L. P.* No. 18 of 1845.

but not to be required in Bengal.

2049. Persons past the prime of life are not to be admitted into the police force except when some peculiar advantage is to be gained from the appointment. C. O. Sup. Pol. *L. P.* No. 18 of 1840.

Persons appointed must be efficient.

2050. The darogahs are not to nominate individuals to supply vacancies in their subordinate establishments, except in instances in which they are especially directed to do so by the magistrate. Reg. XX. 1817, sect. 3, cl. 2.

Darogahs may not nominate to subordinate appointments.

2051. The magistrate is to furnish to each police officer on his appointment a written document, under his official seal and signature, specifying the station to which the officer is appointed, and requiring him to perform the duties of it in conformity with the regulations. Reg. XX. 1817, sect. 3, cl. 3.

Sunnud to be furnished to each officer on appointment.

2052. When sending up to the superintendent of police the nomination of a police officer for approval, the magistrate is to state whether he is related to or connected in any way with the omlah of his own or of the sessions court. C. O. Sup. Pol. *L. P.* No. 19 of 1840.

Relationship of the person nominated to the omlah to be noted.

2053. Magistrates are to appoint police officers only to act, until they have obtained the sanction of the superintendent; and a report on the subject is to be invariably sent without delay for the orders of that officer. C. O. Sup. Pol. *L. P.* No. 20 of 1838.

Report of appointment to be forwarded for confirmation.

2054. The magistrate is to send to the superintendent of police, without delay, a report for confirmation whenever he thinks it expedient and proper to dismiss any police officer above the grade of burkundaz. C. O. Sup. Pol. *L. P.* No. 1 of 1838.

Report of dismissal to be forwarded for confirmation.

2055. Monthly returns are to be furnished by the magistrate to the superintendent of police of the dismissals and appointments of police officers in the form No. 6 of appendix F

Monthly returns of dismissals and appointments.

(a) It was formerly held by Const. No. 788 that this provision was applicable to the whole of the ceded and conquered provinces; but it seems, from a note to that Const. in Mr. Buckland's edition, that the Calcutta court held on the 11th July 1853 that it was restricted to those districts in which the tuhseldaree establishments are maintained subject to the authority of the collectors, referred to in the preamble of the regulation.

in addition to the reports made to him for his sanction. C. O. Sup. Pol. *L. P.* No. 1 of 1839.

Deaths, resignations, removals, and appointments to be noted to the superintendent,

2056. All deaths, resignations, removals, and appointments, in the office of a cutwal or darogah of police, are to be communicated by the magistrates to the superintendents of police, in such form as the superintendents deem convenient and proper; in order, not only that the registers of police establishments may be kept correct, but that any cutwal or darogah who has been dismissed from his office on conviction, before the sessions court or the nizamut adawlut, of corruption or of any other criminal offence, declared to be punishable by dismissal from office, may be precluded from being again employed in any similar situation elsewhere. Reg. XVII. 1816, sect. 9, cl. 1.

who is to take care that improper persons are not appointed.

2057. If any case of this nature comes under the observation of the superintendents of police, it is their duty to communicate the requisite information to the magistrate, in order that the darogah, or other police officer, who has been appointed under such circumstances, may be immediately removed from his situation. Reg. XVII. 1816, sect. 9, cl. 2.

The removal of a police officer does not prohibit his being again employed in the service of government.

2058. The removal of a police officer is not to be considered to preclude his future appointment in any other situation in the public service, for which he is deemed duly qualified, except in the cases of conviction described in the first clause of this section. Reg. XVII.

The courts of sessions and nizamut adawlut may order the dismissal of any native officer convicted of a criminal offence.

2059. A session judge holding a jail delivery, or the court of nizamut adawlut, may order the dismissal of any native officer convicted of a criminal offence declared punishable by dismissal from office; or, though not so expressly declared, if the conduct of such native officer appears, from any proceeding before the sessions court or nizamut adawlut, to be such as to require his removal from the public situation held by him. On the same being notified to the magistrate, or other European public officer, under whom the native officer so dismissed has been employed, it is the duty of the magistrate, or other European officer, to take measures for the appointment of a successor to the vacant office in conformity with the regulations. Reg. XXV. 1814, sect. 15. Reg. XVII. 1816, sect. 7, cl. 8.

2060. Under the above provisions, in cases before the sessions court as trials, the session judge is competent to order the dismissal of police officers convicted of any offence, which appears to require their removal from public office. Const. No. 1328.

All native officers are liable to removal without proof of any specific act of criminality.

2061. Police officers of every denomination, as well as all other native officers in the service of government, are liable to removal from the public trusts committed to them, without proof of any specific act of criminality, whenever there is sufficient reason to believe them incapable, or neglectful of their prescribed duties, or in any respect unworthy of public confidence. Reg. VIII. 1809, sect. 5, cl. 5.

Magistrate may fine for neglect of duty one month's pay.

2062. The magistrate is authorized, in addition to the general powers vested in him by the regulations for the punishment of any specific crime or misdemeanor, to fine any officer of police under his authority for neglect of duty in a sum equal to one month's salary; and to cause the same to be levied by a stoppage of the fixed allowance payable to such officer. Reg. VIII. 1809, sect 5, cl. 5.

2063. As a specific provision is made by the above clause for the punishment of neglect of duty by officers of police, the magistrate is restricted in such cases to the limitation of punishment therein defined; but if any distinct misdemeanor beyond neglect of duty is established, the case of course falls within the magistrate's discretion under the general powers vested in him by sect. 19, Reg. IX. 1807. Const. No. 244. C. O. Sup. Pol. L. P. No. 8 of 1840.

But the fine cannot be greater; and he cannot inflict imprisonment, except in case of a distinct misdemeanor.

2064. A magistrate cannot fine a police officer for neglect of duty without judicial enquiry and the record of evidence. Reports L. P. 1856, part 1, page 907.

Fine cannot be inflicted without judicial enquiry.

2065. Dismissal from office is not to be resorted to as a punishment in the police, excepting for offences of a serious nature, or continued acts of neglect, inefficiency, and misconduct.(a) The magistrate is to keep a register, in the form No. 20 of appendix B, inserting therein the minor punishments he has occasion to impose upon his police officers. These should be reprimands, fines under the above provisions, and temporary deprivation of office not exceeding 6 months. If it appears that a repetition of these minor punishments is insufficient to produce activity, regularity, or a proper attention to their duties on the part of any officers, dismissal must then take place; and the papers of the case, in which this last punishment is ordered, are invariably to be sent to the superintendent of police, together with an extract from the register shewing to what punishments, and for what offences, the dismissed officer has been previously subjected. In all cases where punishments are imposed on a police officer, the reasons for them, and the mode of conduct he should in similar cases adopt, are to be pointed out to him in plain but courteous terms. Of course

Remarks of the superintendent of police on the punishment of police officers.

The reasons of punishment are always to be explained.

(a) "The greatest bane to the force at present, and the bar to the entry into it of respectable men, is the extreme uncertainty of the tenure of office, and the degradation to which the officers have been in too many instances subjected by dismissal, heavy pecuniary fines, and imprisonment, in cases which really did not call for such severe measures. The first step to restore to the police some degree of self-respect is to abstain from all punishments, which degrade the feelings of those punished without producing any good effect on their fellow officers. Dismissal has been so common that magistrates have almost ceased to consider it as forming any kind of disqualification for future employment. It has lost its effect as a punishment or example, and beyond a temporary degradation is not held in terror by those holding office in the police."—C. O. Sup. Pol. L. P. No. 16 of 1840.—With this order the superintendent circulated a register (subsequently continued) of police officers "dismissed for offences which would seem to render them unfit for future employment without great attention on the part of the local magistrates to the circumstances under which they consider them qualified for a further trial." This register is not intended as a declaration that the persons entered therein are incapable of again serving the government in any capacity; but to enable the magistrates to exercise a sound discretion in the re-nomination of those persons: if, therefore, a magistrate desires to employ any of those persons, he is to state his reasons for selecting him in preference to others, upon whose character there is no slur. Again, in C. O. No. 3 of 1845, the superintendent observes that "the increase made to the salaries of all darogahs, and the creation of two higher grades, which all who conduct themselves properly may reasonably expect to gain, must have a great effect in raising the character of the police, and procuring more respectable persons as candidates for vacant situations; but much of the benefit to be derived from this measure must also depend on the treatment shown to the officers by their immediate superiors. The police officers should not be harassed by fines, and summonses to appear before the magistrate on petty or insufficient occasions; errors should be pointed out to them in terms not likely to wound their self-respect; and whilst all attempts at oppression or corruption, for which there can be now no excuse, are checked, police officers should be encouraged in the proper performance of their duties by a degree of courtesy and consideration evinced on the part of the magistrate towards all those who honestly endeavour to carry out the objects of their appointment." The Court of Directors concur in these observations, and remark that "heavy fines imposed upon native officers whose allowances are barely, if at all, sufficient for their subsistence, must have the effect of driving them to acts of corruption and extortion; and the disregard of their just rights and reasonable feelings by their official superiors must degrade them in their own estimation, and in that of the public, and must deter men of respectable character from holding situations in which they are exposed to such hardships and disgrace."

cases sometimes occur, where immediate dismissal without any intermediate punishment must follow the offence. C. O. Sup. Pol. *L. P.* No. 16 of 1840.

Distribution of rewards.

2066. As a general rule rewards ought to be given only in very particular instances to the officers of police, who should be induced to look forward to promotion for acts of good conduct. In cases where great personal courage, vigilance, or tact is exhibited, a report should be made to the superintendent of police before the admission of the officer to a reward. C. O. Sup. Pol. *L. P.* No. 13 of 1842.

Register to be kept by the magistrate of police officers deserving of promotion, *L. P.*

2067. The magistrate is to keep in a book in the English and native languages a register of police officers deserving of promotion, in the form No. 17 of appendix B, in order to hold out as an encouragement to them, that good conduct on their part will be noticed and meet with reward. A similar register is kept by the superintendent of police ; and the magistrate is to forward to him for record therein a transcript of every entry which he makes in his register. The superintendent wishes that all promotions in the police should be made from amongst those entered in these registers as deserving of reward. C. O. Sup. Pol. *L. P.* No. 2 of 1840.

Book of character to be kept of certain officers, in offices of commissioner, and magistrate.

2068. The following rules were passed in the Western Provinces with a view both to an efficient control over the executive and ministerial establishments, and to the proper encouragement and protection of the officers serving on them, that a permanent record, might be maintained and employed for systematic reference of all orders and proceedings of superior authorities, relating to the character and conduct of such officers. I. Character books shall be prepared and kept up in the offices of the commissioners of revenue and police, with entries for the clerks of the English office drawing rupees 50 and upwards, for serishtadars and record-keepers, and for officers of other grades, who may draw a salary of the above amount ; and in the offices of the magistrates and collectors, to include officers of the same grades, and scale of pay, with the addition of the jail darogahs, and foudjaree and revenue nazirs ; as also of the tuhseeldarces and thanas in each district, to include tuhseeldars, naib tuhseeldars or peshkars, thanadars, mohurirs, and jemadars. Two books will be kept by the magistrates and collectors, one for the sudder office and one for the mofussil offices. II. The books to be of English paper, and strongly bound for permanent record. All entries will be made either by the head of the office, or by the officer in charge of a sub-division ; entries made in such cases for a sub-division (within such limits of penalty as may be allowed, in each instance, in the discretion of a magistrate and collector) are to be shown monthly to the latter officer, and to be countersigned by him at the close of the month, in attestation of their having been inspected by him. III. A page will be left blank in regard to each officer, for the entry in the first instance, and afterwards yearly, of any of his connections, who may be employed in the same district. The entries on the page following, will be according to the form annexed.(a) Two or three further pages will be

Entries to be made by head of office.

A page to be left for entry of connections.

(a)

TOORAB ALLEE

is the son of a zumeendar of the _____ district, vide letter of _____ to the collector, dated the _____. He was appointed peshkar of the _____ tihseel by Mr _____ in _____ in _____ ; he was appointed officiating tuhseeldar of _____ by _____

left blank, in each instance, for additional entries. IV. The brief description of the previous service of the officer in any of the higher grades, which is to be placed at the head of the entries, as shown in the form, should be taken from each officer concerned, who will be held strictly responsible for its correctness. In the columns marked for the purpose, a brief record will be made of every order or proceeding hereafter issued conferring any marked reward, or noticing with special credit, the conduct of the officer in any particular case. The nature only of the order or reward will be noted, with a distinct reference to the proceedings of the case itself. In those proceedings it will invariably be mentioned that the appropriate entry has been directed to be made in the character book. V. All such notices will be in English, excepting where a sub-division may be under a native deputy collector and joint magistrate, who will, in that case, record the notice in his own language. All such notices will be signed in full by the officer responsible for them at the time when they are made. VI. The record will, ordinarily, be simply a note of the purport of the order of approbation or censure, expressed so as to enable the original record to be traced without delay. In cases in which the head of an office, called upon to testify to the character of any of the officers included in the register, may have clear and strong ground for certifying the particular merits and efficiency of such officer, when these may not be apparent on the face of the entries, or in which, on giving over charge of the office, he may, from the like nature of the entries, think it just to leave such a record, he will be at liberty to add a note stating his opinion generally to that effect, and the circumstances on which it is founded. Otherwise, the record will be only of orders of proceedings actually held in respect to each officer, as occasion may arise. VII. All orders of promotion, and of suspension or dismissal, will be entered as indicated in the annexed form. Resignations of office, connected with no cause of censure on the conduct of the officer, may be entered in a separate foot note. VIII. If any order, whether of approval or censure, should subsequently be overruled, or altered by superior authority, the circumstance will be carefully noted by a red ink entry, written across the original entry. IX. On all occasions of the promotion, suspension, or removal of an officer, an extract from the character book, comprising all its entries, will be attached to the proceeding recorded in the native office and will form a necessary part of the record, when submitted, as may be requisite under the established rules, to higher authority. X. No officer who has served in one district, shall obtain employment in another district, without an extract from the character book being filed with the proceeding of appointment, and on his appointment in the new district taking place, the extract will be incorporated in the character book of that district. Such extract shall be claimable by the officer as of right and shall be given without expense, under the signature of the head of the office. But the extract shall be complete, so as to comprehend all entries, whether of approval or the reverse. The prac-

Description of previous services.

Entry of rewards, or commendation.

Entry to be in language of head of office, and signed.

Entries to contain reference to records.

Head of office may add notes on general character.

Orders of promotion, suspension, or dismissal.

If order be overruled.

Extract from character book to be filed with orders.

Office taking employment in another district.

Extract claimable by each officer as of right.

and confirmed in the substantive appointment by the commissioner, in his letter No. ——— dated ———. He has ——— landed ——— property in the ——— District. *N. B.* Note, on the page left for that purpose, any relatives employed in the district to which the register relates, and any period of discontinuance of the government service exceeding six months, with the reason for relinquishing it at that time.

Note.— On this half page enter notices of approbation and rewards, and orders of promotion.

Note.— On this half page enter notices of censure or punishment, including suspension and dismissal.

Separate certificates not to be given.

Record may be kept of inferior officers.

Heads of offices in other districts may obtain information.

Commissioners to examine these books, and report.

Rules for promotion of darogahs to higher grades.

Encouragement to be given to young men who have been educated.

In the case of Budhuks employed in the police.

tice of issuing commendatory parwanas, or separate certificates of good character, in the case of officers upon establishments, and of grades, for which the registers are to be formed, is strictly prohibited from the date on which these orders will have effect. Opinions as to peculiar ability and good character may be recorded on the extracts, in cases in which they may be thought to be specially called for, under the provisions contained in rule 6. XI. Officers will be at liberty to make a record of the character of persons in the lower grades, as of duffadars and burkundazes, in cases which they may regard as of highly marked good conduct, meriting such a distinction. Where such a record is made, it should also be noted whether the party has received any, and what, extent of education. XII. Heads of departments in other districts, desirous to give employment to officers of approved good conduct, will be at liberty to refer for any information which can be supplied from these registers in any part of the country in which they are kept up. XIII. It will be the duty of commissioners, on their annual tours, to see that the present rules are regularly and carefully observed by the several officers responsible for their execution, and the subject will be specially mentioned in their yearly police reports. Govt. Order *W. P.* 244 A, January 23, 1855.

2069. The total number of 1st and 2nd grade appointments at the disposal of the government are to be held available for such darogahs as deserve promotion, wherever they may be posted, and without reference to the number of officers of the same grade in any one province or division. A register of all darogahs of the two senior grades is to be kept by the secretary to government; and all vacancies occurring in each division through the death, suspension, degradation, or dismissal of officers in those grades are to be reported by the commissioner of circuit without loss of time. He is to furnish annually with his police report two statements in the forms A and B [Nos. 18 and 19, of appendix B] showing what officers he considers entitled to promotion; and the order in which they should, in his opinion, be promoted; and each year's lists should be made to supersede those previously submitted. As vacancies occur, promotions are to be made by the government from the record thus kept of the returns from the several divisions. In this manner a more systematic plan of promotion will be observed; and darogahs will be promoted not only for single instances of good conduct, or because others of equal desert have been less prominently noticed, but on a general view of their past services and merits. Particular attention is called to the importance of obtaining the services of educated men on the occasion of all vacancies in the police. C. O. Govt. Bengal No. 8, February 17, 1854.

2070. Young men who have had a good education at the government and other institutions would gladly enter into the police if encouragement were held out to them. The admission of this class into the police would not only add to its efficiency, but also to the integrity of the body; and young men of this class should be encouraged to come forward as candidates for employment in the police by giving them *cæteris paribus* the preference over others. C. O. Sup. Pol. *L. P.* No. 6 of 1850.

2071. Magistrates in the Western Provinces are to keep the strictest watch over all re-claimed or surrendered Budhuks who may be employed in their police, and if any of these men shall at any time abscond, the magistrates will immediately report the circumstance to

the assistant commissioner for the suppression of dacoity; and if it shall be necessary to discharge any of them, the magistrates will make them over to that officer for such orders as he may give. Govt. Order *W. P.* No. 3395, August 11, 1845.

2072. The superintendents of police are competent, in the same manner and to the same extent as local magistrates, to impose fines upon any cutwal, police darogah, or other subordinate officer of the police establishments stationed within the limits of their respective jurisdictions. Reg. XVII. 1816, sect. 11, cl. 1.

Power of superintendent of police to fine police officers.

2073. The superintendents of police are likewise competent to suspend from office any cutwal, darogah, or other subordinate officer of the police of their respective jurisdictions, during any inquiry which they judge proper to institute in regard to the conduct of such officer, and also for neglect, or failure to furnish information, or to obey orders issued to them by the superintendents of police. Reg. XVII. 1816, sect. 11, cl. 2.

and to suspend them;

2074. Whenever the superintendents of police deem it necessary, in the discharge of their duties, to fine or suspend any such officer, they are to communicate an extract from their proceedings, with a copy of the order passed by them to the local magistrate, who, in pursuance of cl. 1, sect. 5, Reg. III. 1812*, is to proceed to realize the fine in the same manner as if it had been imposed by himself, or to carry into effect the superintendent's order of suspension, and to supply the vacancy occasioned thereby. Reg. XVII. 1816, sect. 11, cl. 3.

and he is to certify such sentences to the magistrate for execution.

* *v. para.* 1971.

2075. The superintendent of police is fully competent, on sufficient ground, to remove of his own accord any of the officers, whom he is competent to remove on reference from the magistrate. Const. No. 62.

Superintendent of police may remove officers of his own accord.

2076. All appeals from the awards of magistrates dismissing or suspending police officers for breach of duty as such, lie exclusively to the commissioners (superintendents of police), who are responsible for the good order of the police. But this does not remove trials of police officers committed for bribery from the session judge to the superintendent of police; and appeals in cases of that nature lie to the former. C. O. No. 240 of vol. 2. Const. No. 1134. And the commissioner of circuit cannot take up an appeal from a police officer who has been fined for neglect of duty. Reports *L. P.* 1856, part 1, page 907.

Appeal from awards of magistrates dismissing or suspending against police officers lie to the superintendent;

2077. The appeals of parties seeking redress from orders of magistrates dismissing them from their situations, such orders not being part of the sentence passed in any criminal trial, cannot be heard by the session judge, but lie under the law to the commissioner. C. O. No. 35 of vol. 3.

and cannot be heard by the session judge.

2078. As the terms of sect. 8, Reg. XI. 1831* include all police officers of whatever denomination without reference to the amount of their salary, appeals from the orders of the magistrate may be received in districts of the ceded and conquered provinces, in which tihseeldaree establishments are maintained subject to the authority of the collectors, by the commissioner of circuit from any police officer, whether his salary is above or below the sum of ten rupees. Const. No. 907. C. O. No. 142 of vol. 2. See note to Const. No. 907 in Mr. Buckland's edition.

All officers may appeal without reference to the amount of their salary.

* *v. para.* 2045.

The session judge cannot interfere with the orders of the magistrate regarding the appointment or removal of police officers.

2079. It is not competent to a session judge to interfere with any order passed by a magistrate, or joint magistrate, regarding the appointment, suspension, or removal of any police officer, the revision of which is entrusted by section 4 of this Act to the superintendent of police. Act XXIV. 1837, sect. 5.

The orders of the superintendent in such cases are not open to revision by the nizamat adawlut.

2080. The orders of the superintendent of police in regard to the appointment, suspension, or removal of a police officer of a magistrate, or joint magistrate, passed under the above provisions, are not open to revision by the nizamat adawlut. Act XXIV. 1837, sect. 6.

Appeals from officers, employed in both the revenue and police departments, lie to commissioners.

2081. Appeals from orders for the removal of police officers on the establishment of the magistrate and collector, who are also employed in the revenue department, lie to the commissioner, and not to the session judge. So also, in regard to the removal of native officers in whom revenue and police functions are combined, the appeal would lie in either case to the commissioner; unless a regular criminal trial has been held, in which case it would lie to the session judge. C. O. No. 177 of vol. 2. *W. P.*

Appeals may be forwarded by dawk;

2082. Commissioners may receive and act upon petitions from suspended officers forwarded by the dawk, provided they are written on stamp paper. Const. No. 344.

or may be presented to the magistrate, who is to forward them with the papers of the case, if written on stamp papers and presented within the proper period.

2083. Police officers dissatisfied with the orders of a magistrate are permitted to present their petitions of appeal to the magistrate, if written on the proper stamp paper; and, if presented within the usual period allowed to appellants, the magistrate is bound to forward the appeal with the papers of the case for the orders of the superintendent of police. In case the officer suspended or dismissed does not present his petition of appeal to the magistrate within the period allowed, the magistrate is to refuse to accept it, and is to refer the officer to a personal appeal at the office of the superintendent. C. O. Sup. Pol. *L. P.* No. 20 of 1838.

If the appeal is forwarded by dawk it must be accompanied by copies of the proceedings appealed against.

2084. If the course prescribed in the above order is not adopted by police officers appealing, they must forward to the superintendent with their petitions of appeal copies of the proceedings ordering their dismissal, without which their petitions will not be attended to. One of the two courses referred to must be followed. C. O. Sup. Pol. *L. P.* No. 24 of 1844.

Facilities to be given for personal attendance of appellant during the hearing of his appeal.

2085. When appeals are received by dawk, and no one is present at the station of the commissioner to attend at their hearing, they may, without objection, be taken up and disposed of as the commissioner may find to be most convenient, with reference to the other business which demands his attention. But where parties interested in an appeal, whether as principals or agents, are in attendance, the hearing should invariably be held by the commissioner in his public office, with a sufficient previous notice of the day fixed by him for the purpose, so that those concerned may have full facility for appearing, and for making such statements as they may wish to offer in support of their applications. The order on the appeal should also be passed in their presence, and personally explained to them by the commissioner. C. O. Govt. *W. P.* No. 49A, January 11, 1854.

Police officers

2086. If the darogah of a jurisdiction, or any officer under his authority, is guilty of corruption, extortion, or oppression, or commits any act repugnant to this regulation, he

is liable to be committed^(a) by the magistrate to take his trial for the same before the sessions court, or to be prosecuted for damages in the civil court, at the option of the party injured. *Beng. Reg.* XXII. 1793, sect. 22. *Ben. Reg.* XVII. 1795, sect. 20. *Ced. Prov. Reg.* XXXV. 1803, sect. 21. C. O. No. 35 of vol. 1.

cuted in the civil or criminal court.

2087. A magistrate is competent, whenever he sees reason to suspect that any charge of corruption or extortion preferred against his police officers is false and unfounded, to call on the person preferring the charge to give security for his attendance until the final decision of the case. *Const. No.* 731.

In such cases the prosecutor may be required to give security for his attendance.

2088. Whenever the local government, or the head officer of a department or office under government, is of opinion that there are good grounds for making a public enquiry into the truth of any imputation of corruption, extortion, embezzlement, or other malversation, committed at any time during tenure of office by any ministerial or police officer subject to the jurisdiction of the courts of the East India Company, and subordinate to such government, or employed in such department or office as the case may be, it is lawful for such government, or any such head officer as aforesaid, to prosecute such officer on the part of government in a criminal court, or to nominate some person to conduct such prosecution. And it is also lawful for such government, or head officer as aforesaid, in their or his discretion, to undertake on the part of government the prosecution in a criminal court of any such charge as aforesaid, which may be brought by an aggrieved private party against any such ministerial or police officer, and such prosecutions as aforesaid are not to be barred or affected by reason of the party prosecuted having ceased to be in the service of government at the time at which the charge may be brought against him. *Act XXXII.* 1852, sect. 1.

Prosecution of any subordinate officer on the part of government upon charges of corruption, &c.

Prosecution may be conducted on the part of government, if charge be brought by private party.

Not barred by service having ceased.

2089. Provided always that no collector, magistrate, nor head of an office in the salt, abkaree, or customs department, under the grade of commissioner, is to commence or undertake a prosecution under this Act, until he shall have obtained the permission of the court, board, or officer, to whom he is immediately subordinate, to institute the same. *Act XXXII.* 1852, sect. 2.

Prosecution not to be commenced without sanction of board, or other controlling authority.

2090. Where a deputy magistrate committed a police officer on the prosecution of government without the commissioner's sanction, and the judge returned the case with directions that such sanction should be obtained, and the prisoner was afterwards re-committed on such sanction and tried; it was held that the proceedings were regular. *Reports W. P.* 1855, part 2, page 81.

Trial is illegal without such sanction.

2091. No collector, magistrate, judge, or other officer, who may prosecute any officer under this Act, or cause such prosecution to be instituted, or who may conduct any preliminary investigation into the conduct of such officer connected with such prosecution, nor any of his deputies, assistants, or subordinate officers, is to act as judge in any such prosecution. *Act XXXII.* 1852, sect. 3.

Officer engaged in prosecution, or his assistants, not to act as judge.

(a) A magistrate is of course competent to pass sentence of punishment on his own authority, to the extent of the powers vested in him by regulations passed subsequently to those cited above, if he consider such punishment adequate to the degree of criminality of the accused. See *Const. No.* 237. The subject of corruption, &c. will be found more fully treated of in a subsequent part of the work.

Rules for leave of absence; the appointment and salary of persons officiating.

2092. Any police darogah, mohurir, or jemadar, applying for leave of absence, is to name an individual for the approval of the magistrate to officiate for him during his absence; and the person, who is appointed to act, is to receive, during his absence, the entire allowances of the police officer for whom he officiates, or such part thereof as the magistrate, in each instance, judges it proper to fix. The burkundazes are to submit their applications to the magistrate through the darogahs; and the persons nominated to act during their absence are to receive the entire salaries of the individuals for whom they officiate, or such part thereof as is fixed by the magistrate. In the event of the absentee's exceeding the period of his leave, the darogah is to report the circumstance for the orders of the magistrate. Reg. XX. 1817, sect. 7, cl. 1.

Acting darogah to receive full salary.

Suspended darogah, if acquitted, may be paid back salary.

2093. Whenever a police darogah is suspended from office, and it is found necessary to appoint an acting darogah, the latter is to receive the full salary of the office whilst he is so employed. If the darogah is acquitted of the charge against him, the magistrate, or sessions court, before whom the trial is held, is to report for the consideration and orders of government, whether the darogah appears to be entitled to receive the whole or any part of the salary of his office for the time of his suspension. C. O. No. 51 of vol. 1.

Arrangement to be made, if the darogah of one thana is put in temporary charge of another during the suspension of the darogah of the latter.

2094. The above order is not strictly applicable to the case of a person holding the office of a police darogah, and receiving his salary as such during his temporary appointment to the charge of another contiguous thana, while the darogah of the latter is under suspension. But if any additional allowance appears proper, in consideration of the additional duty, it should in the first instance be paid out of the salary of the suspended darogah, subject to the provision, given above, for cases of ultimate acquittal: and in such cases the magistrate appointing the officiating darogah is to regulate the amount of the allowance to be received by him, according to the extent of the trust, and the additional duty to be performed. C. O. No. 198 of vol. 1.

Extra expenses occasioned by delay of magistrate to obey orders of restoration.

2095. Any extra expenses occasioned by the neglect of a superior court's order, directing the restoration of a native officer to office, are to be retrenched from the allowances of the person by whose fault the restoration has been delayed after receipt of orders to that effect. C. O. No. 254 of vol. 1.

Police officers of one zillah are not to be arrested in another while in the execution of their duty.

2096. The magistrate of Burdwan was censured for arresting a police darogah of Beerbhoom, while in the execution of his duty in serving a warrant issued to him by the magistrate of the latter district; and was informed that he should have postponed requiring the darogah's attendance, until he had completed the duty on which he was deputed by his immediate superior. Const. No. 851.

Civil writs for the apprehension, or personal attendance of police officers, are to be served through the magistrate.

2097. Writs for the apprehension of the person, or for requiring the personal attendance of police officers under civil processes, are to be issued through the magistrate. This rule does not of course apply to notices or proclamations not requiring personal attendance, or to processes which give the party the option of appearing in person or by vakeel. C. O. No. 203 of vol. 3. L. P.

2098. The magistrates in the lower provinces are authorized to remit by collectorate drafts the proceeds of property belonging to deceased police officers when dying at a distance from their homes. C. O. Sup. Pol. *L. P.* No. 16 of 1844.

Proceeds of property of deceased police officers may be remitted by collectorate drafts.

2099. A police darogah especially deputed to make local enquiries in a thana not immediately under him and distant from his own, may be allowed travelling charges; but it is to be distinctly understood that this indulgence is not to extend to cases in which darogahs follow criminals into other thanas than their own in the ordinary course of duty. On extraordinary occasions, however, of the latter description where darogahs have to pursue criminals for days together through one or more districts, the superintendent is authorized to pass their *bond fide* travelling expenses. Great caution is to be observed in the deputation of darogahs to other thanas, and such a measure should be adopted only in peculiar and important cases. C. O. Sup. Pol. *L. P.* No. 3 of 1846.

Travelling allowance of police darogahs.

Deputation of darogahs to other thanas.

SECTION V.

OF THE DEPUTATION OF BURKUNDAZES TO THE SUDDER STATION.

2100. Whenever a burkundaz is despatched to the magistrate's court, the jemadar, or other police officer, by whom he is despatched, is to deliver to him a certificate, showing the name of the burkundaz, and the date and time of his despatch, agreeably to the first three columns of the form No. 1 (No. 11 of appendix C). Reg. XX. 1817, sect. 7, cl. 2.

Burkundaz despatched to magistrate's court is to be provided with a certificate,

2101. On the arrival of the burkundaz at the sudder station, he is to proceed to the nazir of the foudjaree court, who is to insert in the fourth column of the paper the date and hour of his arrival; and, in the event of an unnecessary delay appearing on comparing the date of his despatch from the thana with that of his arrival at the sudder station, is to report the circumstance to the magistrate. Reg. XX. 1817, sect. 7, cl. 3.

which is to be presented to the nazir, who is to report any delay;

2102. On the departure of the burkundaz from the sudder station, he is again to proceed to the foudjaree nazir, who is to note in the fifth column the date and time of his departure; and on his arrival at the thana station, the certificate is to be delivered up to the darogah, mohurir, or jemadar, who, in the event of the burkundaz having loitered on the road, is to report the particulars for the orders of the magistrate. Reg. XX. 1817, sect. 7, cl. 4.

and so, on his departure from the sudder station.

2103. Police officers bringing in witnesses or defendants should not be allowed to remain in attendance at the cutcherry, while the examinations of such persons are being taken; as it interferes with their proper duties; and as their object is frequently to see that the witnesses and others adhere to the story, which they have been previously compelled or instructed to state at the thana. C. O. Sup. Pol. *L. P.* No. 10 of 1846.

Police officers bringing in defendants and witnesses are not to be allowed to remain in attendance at the cutcherry.

SECTION VI.

OF CHOKEEDARS.

In cities, towns, &c.

To what places the Act is to apply.

Proviso.

2104. The provisions of this Act shall have effect in the cities and stations in which Regulation XXII. 1816 has heretofore been in force, and in every other city, station, town, suburb, and bazar in the presidency of Fort William in Bengal to which the local government at any time may extend the same by notification in the official gazette. Provided always, that this Act shall not be extended to any city, town, suburb, or bazar, unless there be therein (or in some other city, town, suburb, or bazar with which the same may be united as hereinafter provided) a police station under an officer of a grade not below that of jemadar; nor to any agricultural village. Act XX. 1856, sect. 2.

Unions may be formed.

2105. The government may, by notification to be published in the official gazette, unite, for the purposes of this Act, any city, town, suburb, station, or bazar, or any part or parts of a city, town, suburb, station, or bazar, with any other city, town, suburb, station, or bazar, or part or parts of a city, town, suburb, station, or bazar; and in such case all the provisions of this Act applicable to a city, town, suburb, station, or bazar shall apply to such union. Act XX. 1856, sect. 3.

Government may define limits of cities, towns, &c.

2106. For the purposes of this Act the local government may define and declare the limits of any city, town, suburb, station, bazar, or union, and all occupiers of houses within any such city, town, suburb, station, bazar, or union, as aforesaid, or within such limits as shall be so defined as aforesaid, shall be liable to be assessed or rated according to the provisions of this Act for the purpose of maintaining the chokeedars appointed to be maintained in such city, town, station, suburb, bazar, or union. Act XX. 1856, sect. 4.

Houses let to lodgers how to be assessed.

2107. If any house be let out in portions to different persons, or be let out to or occupied by lodgers or travellers, the person who shall so let the same, or who shall receive the rents or payments from such persons or lodgers or travellers, shall, for the purposes of this Act, be deemed to be the occupier of such house. Act XX. 1856, sect. 5.

Penalty for removing &c. name of street or number of house.

2108. The magistrate may cause a name to be given to any street and affixed in such place or places as he may think fit, and may also cause a number to be affixed to every house in any street or mohullah for the purpose of identifying such house; and if any person shall wilfully remove, obliterate, or destroy such name or number, he shall be liable, on conviction by a magistrate, to a fine not exceeding twenty rupees. Act XX. 1856, sect. 6.

Magistrate to determine number of chokeedars.

Proviso.

2109. The magistrate shall determine the number of chokeedars to be maintained in any city, town, or other such place as aforesaid; but the number of chokeedars so to be maintained shall not exceed one to every twenty-five houses. Act XX. 1856, sect. 7.

Grades and wages of chokeedars.

2110. The chokeedars appointed under this Act may be different of grades, and the wages to be paid to the several grades shall be determined by the magistrate. Act XX. 1856, sect. 8.

Magistrate to determine the sum to be raised annually.

2111. The magistrate shall determine the total amount required to be raised in any year in any city, town, or other such place as aforesaid, for the purpose of maintaining the chokeedars appointed to be maintained therein, and for the purposes specified in sections 33, 34, 35, and 36, of this Act, together with such sum as the magistrate may consider

necessary to provide against the contingency of losses from defaulters in the current year, and the amount of losses, if any, actually sustained from defaulters in the preceding year. Act XX. 1856, sect. 9.

2112. The tax to be levied in any city, town, or other place as aforesaid, for the purposes of this Act, may be either an assessment according to the circumstances and the property to be protected of the persons liable to the same, or a rate on houses and grounds according to the annual value thereof. The local government, on the report of the magistrate and commissioner of circuit, shall determine in each case whether the tax to be levied shall be such assessment or such rate. Act XX. 1856, sect. 10.

Nature of the tax to be levied.

2113. If the tax be an assessment according to the circumstances and the property to be protected of the persons liable to the same, the aggregate sum to be raised by such tax shall not exceed the average rate of two annas per mensem for each house, and the amount assessed in respect to any one house shall not be more than the pay of a chokeedar of the lowest grade. If the tax be a rate on houses and grounds, it shall not exceed five per centum of the annual value thereof. Act XX. 1856, sect. 11.

Limitation of tax.

2114. For the purpose of making a rate under this Act, the annual value of the houses and grounds liable to the rate shall be computed and ascertained upon an estimate of the gross annual rent at which the same might reasonably be expected to let from year to year. Grounds used for purposes of trade shall be liable to the rate, but grounds used for the purpose of cultivation or for depasturing cattle shall not be liable. Act XX. 1856, sect. 12.

Rate how to be ascertained.

2115. The magistrate may, at his discretion, exempt from the assessment or rate, or may relieve from the payment of his assessment or rate, any occupier who may be unable from poverty to pay the same. Act XX. 1856, sect. 13.

Magistrate may exempt occupiers unable to pay the assessment or rate.

2116. For the purposes hereinafter mentioned the magistrate shall constitute and appoint a panchayat for each such city, town, or other place as aforesaid; or, when he may see fit to divide any such city, town, or place into convenient divisions, for each division thereof; and shall issue a sunnud of appointment, specifying the names, residence, business, or other description of the persons appointed and the period for which the appointment is made. Every panchayat shall consist of three or five respectable persons residing or carrying on business in or near to any such city, town, or other place, or in or near to any such division thereof. Provided that, instead of any one such person, the magistrate may appoint any person whom he may think fit to be a member of the panchayat, notwithstanding such person may not reside or carry on business in or near to such city, town, or other place, or in or near to any such division thereof. Act XX. 1856, sect. 14.

Constitution of panchayats.

Magistrate may appoint person not residing in the place to be a member of panchayat.

2117. The panchayat so appointed, or the majority of them, shall, once in every year, if required so to do by the magistrate, prepare and make, in accordance with the rules laid down in the requisition, an assessment or rate upon the several persons liable to be assessed or rated in respect of their occupation of property within the district (whether city, town, or other place as aforesaid, or any division thereof) for which the panchayat shall be appointed, and shall enter the same in a list which shall specify the names of the several occu-

Duties of panchayat.

Form of magistrate's requisition.

piers of property within the district liable to be assessed or rated under the provisions of this Act, the trade, business, or other description of such occupier, the property occupied, and the amount payable monthly by such occupier. If the tax be a rate on the annual value of the property occupied, such annual value and the total amount of the annual rate shall also be specified. The requisition of the magistrate to the panchayat to make out such list shall be in the form marked A(a) or B(b) as the case may be, set forth in the appendix to this Act annexed or to the like effect. Act XX. 1856, sect. 15.

(a)

APPENDIX A.

To [*Here insert the names, places of abode, business, or other description of the panchayat.*]

I do hereby require you, the panchayat appointed under Act XX. of 1856, with all reasonable expedition, not exceeding (*Here insert a period to be fixed by the magistrate*) from the date hereof, to make out and forward to me, the under-signed magistrate of the zillah of , a fair and equitable assessment upon the several occupiers of houses, shops, and buildings, in the (*Here describe the city, town, place, or division,*) for the purpose of raising the sum of rupees required for the maintenance of chokeedars for the year commencing on , and other expenses authorized by Act XX. of 1856. You shall regulate and determine the amount of assessment to be levied from every such occupier according to the circumstances and the property to be protected of each person. But the amount assessed in respect of any one house shall not exceed rupees (*Here insert the pay of a chokeedar of the lowest grade*) and the aggregate amount assessed shall not exceed the average rate of 2 annas per mensem for each house, shop, or building in the district.

If the occupier of any house in the said district shall be unable, on the ground of poverty, to pay the assessment to which he is liable under this Act, you shall exempt him from the same; but the property occupied, together with the name and description of such occupier, shall be specified in the list, together with the ground of exemption.

If any house be let out in portions to different persons, or be let out to or occupied by lodgers or travellers, the person who shall so let the same, or who shall receive the rents or payments from such persons or lodgers, or travellers, shall be deemed the occupier of such house, and shall be assessed accordingly.

The assessment which you are hereby required to make shall specify the name of every occupier of property liable to be assessed, the name, trade, or business, or other description of the person assessed, the annual assessment, and the quota payable monthly; and may be in the following form, or to the like effect:—

Property occupied.	Name of occupier.	Profession or business or other description.	Amount of monthly payment.

(b)

APPENDIX B.

To [*Here insert the names, places of abode, business, or other description of the panchayat.*]

I do hereby require you, the panchayat appointed under Act XX of 1856, with all reasonable expedition, not exceeding (*Here insert a period to be fixed by the magistrate*) from the date hereof, to make out and forward to me, the undersigned magistrate of the zillah of , a fair and equal rate upon the several occupiers of houses, shops, and buildings, and of grounds occupied for the purpose of trade or business, in the (*Here describe the city, town, place or division,*) for the purpose of raising the sum of Rs. required for the maintenance of chokeedars for the year commencing on , and other expenses authorized by Act XX of 1856. You shall regulate and determine the amount of the rate to be levied from every such occupier according to the annual value of the property occupied.

2118. The panchayat shall, if required by the magistrate so to do, instead of making a new assessment or rate, revise and amend the assessment or rate then in force. Act XX. 1856, sect. 16.

Panchayat may revise existing assessment or rate.

2119. When an assessment or rate shall have been made or revised, as the case may be, the panchayat shall forward to the magistrate the list containing the same; and the magistrate shall revise, and, if necessary, amend and settle it. Act XX. 1856, sect. 17.

Magistrate may amend and settle assessment or rate as revised by the panchayat.

2120. When the assessment or rate shall have been settled, the magistrate shall sign the list, and shall cause one copy thereof, together with a notification prepared according to the form marked C(a) in the appendix to this Act, or to the like effect, and written in the lan-

Assessment or rate to be published.

The rent at which any such property may reasonably be expected to let for one year shall be deemed the annual value of such property. The rate shall be an equal per-centage, not exceeding 5 per cent, of such annual value.

Any person occupying ground for the purpose of trade is to be rated in respect thereof; but a person occupying ground for the purpose of cultivation or for depasturing cattle, is not to be rated in respect thereof.

If the occupier of any house or ground, in the said district, shall be unable, on the ground of poverty, to pay the rate to which he is liable under this Act, you shall exempt him from the same; but the property occupied, together with the name and description of such occupier, shall be specified in the list, together with the ground of exemption.

If any house be let out in portions to different persons, or be let out to or occupied by lodgers or travellers, the person who shall so let the same, or who shall receive the rents or payments from such persons or lodgers, or travellers, shall be deemed the occupier of such house, and shall be rated accordingly.

The rate which you are hereby required to make shall specify the name of every occupier of property liable to be rated, the name, and the trade, or business, or other description of the person rated, the annual rateable value of the property, the annual rate, and the quota payable monthly; and may be in the following form or to the like effect:—

Property occupied.	Name of occupier.	Profession or business or other description.	Annual value of property.	Annual rate.	Amount of monthly payment.

(a) APPENDIX C.
An assessment (or rate, as the case may be) made for (Here describe the city, town, village, or other place or division for which the rate is made) upon the several occupiers of houses and other property in the said district, pursuant to Act XX. of 1856, for the purpose of maintaining chokeedars for such district.

Property occupied.	Names of occupiers.	Profession or business.	Amount of monthly (or quarterly) assessment (or rate).

Whereas the above assessment (or rate, as the case may be,) has been duly made pursuant to Act XX of 1856 and has been revised and settled by me, the undersigned magistrate of _____, the several persons whose names are included in the

guage of the province in which the city, town, or place is situate, to be stuck up in some conspicuous place in the district for which the assessment or rate has been made; and another copy, together with a like notification, at the nearest police thana; and shall also cause a third copy to be deposited in his own office. Act XX. 1856, sect. 18.

Assessment or rate to stand good for one year.

Change of occupation before a new assessment or rate.

Revised assessment or rate to be deemed a new one. Proviso.

2121. Unless revised or corrected as hereinafter provided, every assessment or rate under this Act shall stand good for one whole year, and until a new one is made; and in case the occupier of any property included in any assessment or rate shall be changed before a new one is made, the new occupier shall be liable in respect of such property for any portion of the assessment or rate which shall have become payable during his occupation instead of the former occupier thereof; and, after notification to such person, the magistrate may cause his name to be substituted in the said list for the name of the former occupier. Every assessment or rate which shall be revised according to the provisions of section 16 shall be deemed a new assessment or rate. Provided always, that, if no new assessment or rate is made within the first three months of any year, the list of the previous year shall be re-published according to the provisions of section 18, and shall thereupon be deemed to be the assessment or rate for the current year, and shall be open to appeal under the next succeeding section. Act XX. 1856, sect. 19.

Appeal from assessment or rate.

Limitation of appeal.

2122. Any person assessed or rated, who shall be dissatisfied with his assessment or rate, or who shall dispute his occupation of any property or his liability to be assessed or rated, may appeal on unstamped paper to the magistrate; and the magistrate, after making such inquiries as he deems necessary, by examination of the appellant on oath or solemn affirmation, or otherwise, may confirm the assessment or rate or amend the same. In case the magistrate confirm the assessment or rate, he may award costs against the appellant. The decision of the magistrate in such cases shall be final, and no objection shall be taken to any assessment or rate, nor shall the liability of any person to be assessed or rated be questioned, in any other manner or by any other court. Provided that no appeal shall be received after the expiration of one month from the time of the notification of the assessment or rate prescribed by section 18, or of the notification of the substitution of the name of an occupier under section 19, unless the magistrate, upon reasonable cause shown, shall extend the time for receiving such appeal. Act XX. 1856, sect. 20.

Commissioner of circuit may direct revision of assessment or rate.

2123. The commissioner of circuit, with the consent of the local government, may, at any time, direct the magistrate to revise the assessment or rate of any city, town, or other place as aforesaid, specifying the reasons which, in his opinion, render such revision necessary;

said assessment (or rate) are hereby required to pay the monthly (or quarterly) contributions set opposite to their names with regularity to the tax-darogah or other person appointed by the magistrate to receive the same, the first payment on the 10th day of the month next succeeding the date of this notification, and every subsequent payment on or before the 10th day of each succeeding month (if the tax is to be collected quarterly, the months in which the payment is to be made must be specified); or in default thereof, any arrear that may be due will be realized by distraint and sale of the personal effects of the defaulter, or of any goods and chattels which may be found on the premises in respect of which such defaulter is assessed (or rated) and such other proceedings adopted for the recovery of the same as are allowed by law.

Dated this day of

Magistrate of

and the magistrate shall, according to such direction, revise and, if necessary, amend the same. Act XX. 1856, sect. 21.

2124. The magistrate may require the panchayat to revise the assessment or rate at any period during the year; but on every such occasion he shall address a written order to the panchayat, specifying the reasons which render such revision necessary, and requiring an amended return within a stated period. Act XX. 1856, sect. 22.

Magistrate may direct revision at any time of the year, for reasons to be stated.

2125. Whenever any assessment or rate is revised during the year, as provided in the two last preceding sections, a revised list, together with a notification as prescribed in section 18 shall be prepared and published in the manner therein directed. And all objections to such revised assessment or rate shall be made and dealt with in the manner prescribed in section 20. Act XX. 1856, sect. 23.

Publication of assessment or rate as revised under the two last sections.

2126. If any person appointed a member of a panchayat refuse to undertake the office, or omit to perform the duties thereof, and do not, within fifteen days from the date of his appointment, show satisfactory grounds for his refusal or omission, or provide such a substitute as the magistrate approves, the magistrate may fine such person in a sum not exceeding fifty rupees. Act XX. 1856, sect. 24.

Penalty for refusal to serve on panchayat.

2127. If the persons appointed a panchayat, or a majority of them, refuse, or omit, for a period of fifteen days after the receipt of an order from the magistrate, to perform the duties required of them, the magistrate may himself make or revise the assessment or rate, and may enforce the same as if it had been made or revised in the first instance by the panchayat. Provided that the functions of the panchayat shall not thereby absolutely cease and determine, but may be resumed at any time, only not so as to invalidate any act done by the magistrate under this section. Act XX. 1856, sect. 25.

If panchayat refuse or omit to act, magistrate may assume their functions.

Proviso.

2128. No person shall be bound to act on a panchayat unless he shall reside or carry on business within the limits of the district for which the panchayat is to be appointed. Act XX. 1856, sect. 26.

Residents only bound to act on a panchayat.

2129. Every panchayat shall be appointed for the period of one year, and no person shall be compelled to serve on a panchayat for more than one year at a time, or within less than three years after the expiry of previous service; but nothing in this section shall prevent any person from being appointed to serve on a panchayat at any time whatsoever with his own consent. Act XX. 1856, sect. 27.

Duration of panchayat and limitation of service thereon.

2130. If a majority of the persons assessed or rated in any district, for which a panchayat shall be appointed, not being in arrear, make application in writing to the magistrate for the removal of any member of the panchayat appointed for such district, the magistrate, if he think it expedient, may remove such member from the panchayat. Act XX. 1856, sect. 28.

Member of panchayat removable only on application of rate-payers.

2131. If any vacancy shall occur among the members of a panchayat, or if any member appointed shall refuse or decline or be unable to act, the magistrate may nominate and appoint another person to supply the vacancy or to act in the stead of such member, subject to the rules already laid down as to the original appointment of members; but such appointment may be made by a written communication to the person appointed, and it shall

Vacancies in panchayat how to be supplied.

not be necessary to issue a new sunnud under section 14 of this Act. Act XX. 1856, sect. 29.

Panchayat to report misconduct of chokeedars, or death or absence.

2132. The panchayat shall give notice to the magistrate of any neglect or misconduct on the part of any chokeedar within the district for which they are appointed which shall come to their knowledge; and shall also give notice of any vacancy which shall occur in consequence of the death or absence of any chokeedar or from any other cause. Act XX. 1856, sect. 30.

Appointment and duty of sudder panchayat.

2133. In cities and large towns containing three or more divisions or districts, the magistrate may appoint a sudder panchayat consisting of not less than five members, who may be selected either from the members of the local panchayats or from any other residents of the city or town. It shall be the duty of the sudder panchayat to assist the magistrate, when required so to do, in carrying out generally the objects of this Act, and particularly in revising the assessment or rate made by the district panchayats, and enquiring into and reporting on appeals preferred against the same. Act XX. 1856, sect. 31.

Appointment and registry of chokeedars.

2134. The chokeedars to be employed under this Act shall be appointed by the magistrate, and the magistrate shall cause to be kept a register in which shall be entered the name, age, place of residence, and previous occupation of every person so appointed, with the date of his appointment. Act XX. 1856, sect. 32.

Appointment of jemadars and inspectors.

2135. Subject to the approval of the commissioner of circuit, the magistrate may appoint such number of jemadars and inspectors as may be necessary for the supervision and control of the chokeedars. Provided that the number of these officers shall not be greater than one jemadar to fifteen chokeedars, and one inspector to sixty chokeedars. Act XX. 1856, sect. 33.

Appointment of tax collectors and other establishment.

2136. Subject to the approval of the commissioner of circuit, the magistrate may appoint one or more tax-collectors or darogahs and such other servants as may be necessary for preparing, or assisting the panchayat in preparing, the assessment or rate, for copying the same, for collecting the tax, keeping the accounts and records, and otherwise carrying out the purposes of this Act. The magistrate shall take from every tax-collector or darogah such security for the due disposal of the sums collected by him as may be thought necessary. Act XX. 1856, sect. 34.

Contingent expenses.

2137. The magistrate may further incur any reasonable expense in the purchase of stationery, in providing badges, dresses, and weapons for the chokeedars, and for any other contingencies that may seem to him necessary. Act XX. 1856, sect. 35.

Surplus funds may be devoted to conservancy purposes.

2138. After paying the wages of the chokeedars, and defraying the charges specified in the three last preceding sections of this Act, the magistrate may, with the sanction of the commissioner of circuit, appropriate any sum which may be available, to the purpose of cleansing the city, town, or place, or of lighting or otherwise improving the same. Act XX. 1856, sect. 36.

To prepare assessment list.

2139. The tax-darogahs shall prepare, from the lists hereinbefore mentioned, a register, which shall be attested by the magistrate or his deputy or assistant, and shall contain the

names of all persons assessed or rated so far as they can be ascertained, the property in respect of which the assessment or rate in each case is imposed, and the amount payable monthly by each person. Act XX. 1856, sect. 37.

2140. On the tenth of each calendar month, or so soon after as possible, the tax-darogah shall proceed in person or through some one of his office establishment, to collect the amount due for the current month from each person subject to the tax; and for all sums so collected the darogah shall grant a receipt. Provided that, with the sanction of the commissioner of circuit previously obtained, the collection may be made quarterly instead of monthly; and in such case, the amount due for each quarter shall be collected in the last month of that quarter. Act XX. 1856, sect. 38.

To collect assessment.

2141. The tax-darogah shall remit to the magistrate, in such manner as the magistrate shall direct, all sums of money collected either by himself or by any one of his establishment; and the magistrate, or some officer of his establishment authorized on that behalf, shall give the darogah a receipt for every sum of money so remitted. The magistrate shall also cause all such sums of money to be credited to a separate fund to be called the chokeedaree fund of the city, town, or place, in or on account of which they are collected. Act XX. 1856, sect. 39.

To remit collections to the magistrate.

2142. The tax-darogah shall prepare all summonses and processes to be issued against defaulters, and shall make the usual returns thereto, and shall keep a regular account of all distresses levied and sales made by him for the realization of arrears. Act XX. 1856, sect. 40.

To prepare summonses, &c.

2143. On the 20th of each calendar month, or as soon after as possible, the tax-darogah shall deliver or transmit to the magistrate, in one list, a statement of all defaulters, the property in respect to which they are assessed or rated, the amount of the monthly assessment or rate, and the amount due from each. Act XX. 1856, sect. 41.

To report defaulters to magistrate.

2144. On receipt of the aforesaid list, the magistrate shall issue a summons against each of the defaulters therein mentioned, requiring him either to pay the demand or to attend at the cutcherry of the magistrate within a reasonable time, to be specified in the summons, to show cause for his refusal. Act XX. 1856, sect. 42.

Summons of defaulters.

2145. If any defaulter fail to appear in answer to the summons, or having appeared fail to satisfy the magistrate that no arrear is due from him, the magistrate may issue a warrant to the tax-darogah, authorizing him to levy the whole or any part of the demand by distress and sale of any goods and chattels belonging to the defaulter, or being at any time upon the premises in respect of which the arrear is due; and the magistrate's order as contained in the warrant shall be final. Act XX. 1856, sect. 43.

Assessment to be levied from defaulters by distress and sale.

2146. The tax-darogah shall make an inventory of all goods and chattels seized under the magistrate's warrant, and shall give previous notice of the sale, and the time and place thereof, by the beat of drum in the district in which the property is situated. If the arrear be not paid with costs, or the warrant be not in the meantime discharged or suspended by the

Sale how to be conducted.

Proceeds how to
be applied.

Returns of sale.

Costs.

magistrate, the goods and chattels seized shall be sold at the time and place specified, in the most public manner possible; and the proceeds shall be applied in discharge of the arrears and costs; and the surplus, if any, shall be returned on demand to the person in possession of the goods and chattels at the time of the seizure. The tax-darogah shall make a return of all such sales to the magistrate in the form specified in appendix D(d); and the costs upon every such proceeding shall be such as are mentioned and set forth in appendix E(e) annexed to this Act. Act XX. 1856, sect. 44.

(d)

APPENDIX D.

1	2	3	4	5	6	7		9	10	11
District.	Names of defaulters.	Amount of defalcation.	Amount of costs, or penalty.	Inventory of property seized under distress.	Date of distress.	Date of sale.	Property sold.	Amount realized on each article.	Purchaser's name.	Balance.

(e)

APPENDIX E.

Table of Fees payable in distrainments under this Act.

Sum distrained for.								Fee.	
								Rs.	As.
Under 1 Rupee				..	..	..	..	0	4
1 and under	3 Rupees		..	..	..	..	..	0	8
3	5	"	..	..	..	..	..	1	0
5	10	"	..	..	..	..	..	1	8
10	15	"	..	..	..	..	..	2	0
15	20	"	..	..	..	..	..	2	8
20	25	"	..	..	..	..	..	3	0
25	30	"	..	..	..	..	..	3	8
30	35	"	..	..	..	..	..	4	0
35	40	"	..	..	..	..	..	4	8
40	45	"	..	..	..	..	..	5	0
45	50	"	..	..	..	..	..	5	8
50	60	"	..	..	..	..	..	6	0
60	80	"	..	..	..	..	..	7	8
80	100	"	..	..	..	..	..	9	0
Above	100	..	..	..	..	..	..	10	0

The above charge includes all expenses, except when peons are kept in charge of property distrained, in which case 3 annas must be paid daily for each man.

2147. Any tax-darogah or other servant appointed under this Act, and any chokeedar or officer of police, who shall purchase any property at any such sale as aforesaid, shall be liable, upon conviction before a magistrate, to a penalty not exceeding fifty rupees; and the property shall be confiscated. Act XX. 1856, sect. 45.

Penalty for tax-darogah, &c purchasing at such sale.

2148. If no sufficient goods or chattels belonging to a defaulter, or being upon the premises in respect of which he is assessed or rated, can be found within the district in which the premises are situate, the magistrate may issue his warrant to the nazir of his court for the distress and sale of any personal property or effects belonging to the defaulter within any other part of the jurisdiction of the magistrate, or for the distress and sale of any personal property belonging to the defaulter within the jurisdiction of any other magistrate whatsoever; and such other magistrate shall back the warrant so issued, and cause it to be executed, and the amount, if levied, to be remitted to the magistrate issuing the warrant. Act XX. 1856, sect. 46.

Sale of property beyond limits of town, &c.

2149. All goods and chattels, except tools or implements of trade, which may be found upon any premises in respect of which an arrear is due, shall be liable to be distrained for the recovery of such arrear. If the goods and chattels belong to any person other than the defaulter, the defaulter shall indemnify the owner of such goods and chattels from any damage he may sustain by reason of such distress or by reason of any payment he may make to avoid such distress or any sale under the same. Provided that no distress shall be made for any arrears due under this Act after the expiration of six calendar months from the time when such arrears became due. Act XX. 1856, sect. 47.

All goods found on premises liable to sale.

But owner of goods to be indemnified by the defaulter.

2150. Every person who shall wilfully obstruct or molest any tax-darogah or any of his establishment, in the performance of their duties under this Act, or shall fraudulently conceal, remove, or dispose of any of his property for the purpose of avoiding a distress under the provisions of this Act, or shall knowingly assist any other person in so doing, shall be liable, on conviction before a magistrate, to a penalty not exceeding fifty rupees. Act XX. 1856, sect. 48.

Penalty for obstructing tax-darogah in the execution of duty.

2151. The magistrates shall receive and try all complaints preferred on oath or solemn affirmation against any tax-darogah or other person appointed under this Act for extortion, malversation, or other misconduct in the discharge of his duty. On proof of any such offence, the tax-darogah or other person as aforesaid shall be liable to dismissal from office, and to imprisonment, with or without labor, for a period not exceeding six months; and may also be compelled to refund any money corruptly or unduly exacted or received, and to deliver up any effects which may have been illegally distrained or sold, or the value thereof, or in default and until such delivery or refund be made, shall be liable to further imprisonment, with hard labor, for not more than six months. But nothing in this section shall be taken to prevent the magistrate from committing any tax-darogah or other person as aforesaid for trial before the sessions court, or to limit the power of the sessions court in regard to the punishment of such offences under the general law. Act XX. 1856, sect. 49.

Magistrates to try complaints against tax-darogah of extortion, &c.

Penalty for extortion, &c.

Provide.

2152. The chokeedars, and the jemadars and inspectors appointed under this Act shall exercise all the powers, and perform all the duties, and be subject to all the liabilities

Powers, duties, and liabilities of chokeedars, jemadars, &c.

dars, and inspectors.

of police officers as prescribed in the general regulations of the Bengal code or Acts of the government of India for the time being in force, so far as such powers, duties, and liabilities are not inconsistent with, or otherwise expressly provided for by this Act. The chokeedars, and the jemadars, and inspectors, are in all respects subordinate to the police darogah of the thana, within the limits of which they may be employed. Act XX. 1856, sect. 50.

Chokeedars to wear badges.

2153. Every chokeedar appointed under this Act shall wear a badge with a number, and the name of the city, town, place, or division for which he is appointed, engraved thereon. Act XX. 1856, sect. 51.

Duties of chokeedars.—

to apprehend offenders ;

to prevent nuisances,

to give intelligence of resort of thieves, &c.,

to examine and detain suspected persons.

2154. *First.*—Every chokeedar and every jemadar and inspector appointed under this Act shall have power, without warrant, to apprehend and convey immediately to the nearest police station any person or persons taken in the act of committing any heinous offence, or whom he shall have just cause to suspect to be about to commit or to have committed a heinous offence, or against whom a hue and cry shall be raised. *Second.*—He shall have power to prevent obstructions and nuisances on the roads and streets. *Third.*—He shall give immediate intelligence to the police darogah of the resort to his division of any receivers of stolen goods, or of any robbers or other persons of notorious or suspected character, or of any circumstances likely to occasion a breach of the peace. *Fourth.*—He may stop, examine, and, if necessary, detain, any person who shall be reasonably suspected at any time of having or conveying any thing stolen, or who shall be found between sunset and sunrise lying or loitering in any highway, yard, or other place, and unable to give a satisfactory account of himself, and may convey such person to the nearest police station. Act XX. 1856, sect. 52.

All persons required to assist chokeedars in making arrests.

2155. If a chokeedar or other police officer be unable to effect an arrest, he may require all persons present to assist him ; and any person who refuses or neglects to comply with such requisition, shall be liable, on conviction by a magistrate, to a fine not exceeding fifty rupees, or to imprisonment not exceeding two months. Act XX. 1856, sect. 53.

Chokeedars, &c., how to be paid.

2156. On the fifteenth day of each month, or on such other day not later than the fifteenth day of the month as the magistrate may appoint, the chokeedars and the jemadars and inspectors (if any) shall be mustered at the thana to which they are attached, and the police darogah or the mohurir of the thana shall there pay them the wages due to them up to the close of the preceding month, and shall at the same time take the receipt of each chokeedar in an official register of receipts prepared for the purpose ; and the darogah, after signing the register in attestation of its correctness, shall transmit the same to the magistrate. Act XX. 1856, sect. 54.

Punishment of chokeedars for neglect of duty, &c.

2157. Any chokeedar and any jemadar or inspector appointed under this Act, who is convicted of neglect of duty or misconduct, shall be liable to fine to an extent not exceeding half a month's wages, or to imprisonment for any period not exceeding six months. Act XX. 1856, sect. 55.

Suspension or dismissal of police officers.

2158. The magistrate may suspend or dismiss any officer appointed under this Act whom he shall think remiss or negligent in the discharge of his duty, or otherwise unfit for the same. Act XX. 1856, sect. 56.

2159. All fines levied under this Act shall be credited to the chokeedaree fund, and held available for the purposes of this Act. Act XX. 1856, sect. 57.

Fines how to be disposed of.

2160. Assistants to magistrates vested with special powers, and deputy magistrates vested with special powers, when posted at stations other than the sudder station of the magistrate, and empowered, under Act X. 1854, to try cases without reference from the magistrate, may exercise all the powers hereby vested in a magistrate; and any assistant or deputy magistrate vested with special powers may perform any of the duties hereby assigned to a magistrate when referred to him by the magistrate to whom he is subordinate. Act XX. 1856, sect. 58.

Jurisdiction.

2161. All the proceedings of a magistrate under this Act, except as otherwise specially provided, shall be subject to the control of the commissioner of circuit; and all the proceedings of the commissioners of circuit shall be subject to the control of the local government. Act XX. 1856, sect. 59.

Proceedings of magistrate and commissioner of circuit respectively subject to control of local government.

2162. Nothing contained in this Act shall extend to the town of Calcutta. Act XX. 1856, sect. 60.

Act not to apply to town of Calcutta.

2163. Wherever in this Act or in any appendix thereto, there is nothing in the context requiring a different interpretation—the word “magistrate” shall include a joint magistrate, and any person lawfully exercising the powers of a magistrate: the word “house” shall include any shop or warehouse: the word “bazar” shall mean any place of trade where there is a collection of shops or warehouses: the word “district” shall mean a city, town, bazar, or union, or any division thereof: the expression “police darogah” shall include any tuhseeldar or naib tuhseeldar entrusted with police jurisdiction. Act XX. 1856, sect. 61.

Interpretation of Act.

2164. It is the duty of the darogahs, under the guidance and instruction of the magistrate, to keep up at their thanas a complete register of the village watchmen, employed within their respective limits, drawn out according to the form No. 6 (No. 19 of appendix B); and upon the death or removal of any of the watchmen, the landholders and other persons, to whom the right of nomination to such vacancies belongs, are to send the names of the persons, whom they appoint, to the darogah of the jurisdiction, that they may be registered by him as above directed.(a) Reg. XX. 1817, sect. 21, cl. 1.

Village chokeedars.

Darogahs to keep up register of chokeedars.

Landholders, &c. to nominate in case of vacancy.

2165. For the more complete formation of the above register, and to enable the magistrates at all times to ascertain what number and descriptions of watchmen and guards are maintained in aid of the police throughout their respective jurisdictions,—every landholder, farmer, merchant, or other person, employing paiks, chokeedars, pasbans, nigabans, burkundazes, or any other description of watchmen or guards, is to transmit, in the first

All persons employing watchmen or guards are required to furnish an annual list of them to the magistrate.

(a) Under this rule the Calcutta Court held that there is a legal obligation on zumeendars, or other persons to whom the right of nomination belongs, to nominate chokeedars. But as the right of nominating chokeedars is not vested by law in any particular party, that question must be decided by local custom. It was also held that there is no penalty prescribed in the law by which a magistrate can punish any person for not appointing a chokeedar; and that therefore he cannot award any punishment under his general powers. Reports *L. P.* 1854, part 2, page 175. It would seem, however, from the recorded opinions of the judges that the majority did not in fact hold that a magistrate could not under his general powers punish for an offence for which the law has specified no penalty.

month of each succeeding Bengal, Fussily, or Willaity year (according to the era current in the district) made up to the last day of the preceding year, a list thereof, specifying the names, occupations, places of residence, and allowances in land or money, of the several persons entertained by them, to the magistrate of the zillah or city in which they are employed. Any neglect to furnish such lists (especially after being called upon by the magistrate), as well as any wilful omission to include in them persons actually employed as guards or watchmen, of any denomination, is liable to a fine to government not exceeding 200 rupees, to be determined by the magistrate according to the situation of the party and circumstances of the case. Reg. XII. 1807, sect. 21.

Penalty in cases of neglect or wilful omission.

Lists to be furnished of all private servants employed as guards, &c.

2166. All private servants employed as guards, watchmen, &c. come within the rules of sect. 21, Reg. XII. 1807. The magistrates are carefully to enforce the provisions of that law, taking care that the lists required are regularly given in to themselves, as well as to the assistants or deputy magistrates in charge of sub-divisions. C. O. Sup. Pol. L. P. No. 3 of 1847.

Fine how to be levied; and from whom.

* *v. para.* 1847.

2167. Any fine imposed in conformity to the above provision should be commuted, if not paid within a given time, to imprisonment for a limited term.*—In the absence of the zumeendar, the actual manager of the estate is the responsible person, and should be proceeded against in default of compliance with the above requisition. Const. No. 1150.

Chokeedars are subject to darogahs;

and are not zumeendar's servants.

2168. The village watchmen are subject to the orders of the darogahs. Reg. XX. 1817, sect. 21, cl. 2.

Chokeedars when and how to make reports at the thana.

2169. Under the above provision, chokeedars cannot be considered in the light of zumeendar's servants. Const. No. 1281.

2170. Village watchmen who reside within one coss of the thana to which they are subject, are to report daily to the thana all occurrences connected with the police, which have happened in their respective villages during the preceding twenty-four hours;—village watchmen, residing from one to three coss distant from the thana, are to furnish similar reports twice every week;—and all other watchmen, whose residence is situated at a greater distance, are to report once in every week, or fortnight, as they are specially instructed by the darogah so to do. Reg. XX. 1817, sect. 21, cl. 3.

Reports of chokeedars to be entered in thana diaries.

2171. All occurrences reported by the village watchmen are to be recorded by the mohurirs in the thana diaries; but it is not to be considered necessary to enter in such diaries the reports of watchmen, who have no communications to make further than that the peace of their divisions has been undisturbed since their last report. Reg. XX. 1817, sect. 21, cl. 4.

Duties of chokeedars in regard to the apprehension of offenders, and conveying intelligence to the thana.

2172. The village watchmen are to apprehend and send to the darogah, or other police officer presiding at a thana, any person who is taken in the act of committing murder, robbery, housebreaking, or theft; also proclaimed offenders, and persons against whom a hue and cry has been raised of their having been concerned in a recent criminal offence. It is further the special duty of the village watchmen to convey to the thana immediate intelligence of any robbers, who have concealed themselves in their respective villages or in the adjacent country; and also of any vagrants, or other persons who are lurking about

the country without any ostensible means of subsistence, and who cannot give a satisfactory account of themselves. It is likewise the business of the village watchmen to convey early intimation to the thana of all murders, robberies, burglaries, thefts, violent affrays, and other heinous offences; perpetrated in the villages or places in which they are stationed. Reg. XX. 1817, sect. 21, cl. 5.

2173. The report of the village watchmen to the police officers of the regular establishments is to be made verbally; and they are not, unless they appear as prosecutors, to be sworn to their depositions at the thana, or to be detained at the thana, or sent into the magistrate's court, unless on account of misconduct, or under the special orders of the magistrate. Reg. XX. 1817, sect. 21, cl. 6.

Reports to be received verbally; and chokedars not to be detained or sent to the magistrate.

2174. The darogahs are invariably to ascertain and report, when making enquiries on the occasion of any robbery, burglary, or theft, the conduct of the village watchmen; and whether they were present at their posts when the offence was perpetrated; if not, the cause of their absence, and whether there is reason to believe that they were themselves concerned in, or connived at, the commission of the crime. In the event of any neglect or suspicion of criminality attaching to a village watchman, the darogah is either to send the individual to the magistrate with a separate report of the grounds of the charge exhibited against him and evidence to establish the same, or is to forward a report in the first instance and wait the instructions of the magistrate, as the nature of the alleged offence dictates. In the event of any gross neglect or misconduct in the discharge of his duty, as a police officer, being established against a village watchman, he is liable to dismissal from his station by order of the magistrate, independently of any punishment to which he is subject for specific acts of criminality under the laws and regulations in force. Reg. XX. 1817, sect. 21, cl. 7.

Darogahs are to inquire into the conduct of the chokedars;

and how to proceed in cases of neglect or suspicion of criminality.

Punishment.

2175. Chokedars cannot be fined for neglect of duty without a judicial enquiry. Conviction and punishment can only follow proof of the offence; and therefore the neglect charged must be established by evidence. Appeals in such cases lie to the session judge and not to the superintendent of police. Reports *L. P.* 1855, part 2, page 192; and 1856, part 1, page 907.

Not to be punished without judicial enquiry.

2176. The provisions of Reg. II. 1832, do not exempt the chokedars from the duty of reporting the commission of such offences to the police, who are still bound to report to the magistrate all cases that come to their knowledge. C. O. No. 130 of vol. 2.

Chokedars are to report all thefts and burglaries whether prosecuted or not.

2177. As chokedars found guilty of neglect of duty were not formerly liable to stripes in addition to imprisonment, the provisions of Reg. II. 1834, in prohibiting the infliction of stripes, do not authorize an addition to the period of imprisonment to which they were liable previous to the issue of that enactment.(a) Const. No. 923. C. O. No. 238 of vol. 2.

They are not liable to imprisonment in lieu of stripes.

(a) It would seem that the punishment of chokedars, especially those who are paid by land, and of other inferior police officers, for minor cases of neglect or misconduct, falls under the general powers of a magistrate. But it is declared in Const. No. 244 that, as a specific provision is made in cl. 5, sect. 5, Reg. VIII. 1809 (*v. para.* 2063) for the punishment of officers of police for neglect of duty, the magistrate is restricted in such cases to the limitation of punishment therein

Chokeedars are not to be employed privately by police officers.

2178. The darogahs or their police officers are prohibited, under penalty of dismissal from office, from employing the village watchmen on their private concerns, or on any duties unconnected with the police. Reg. XX. 1817, sect. 21, cl. 8.

Duties of patrolling in places, where regular police establishments are stationed.

2179. In those towns and villages, where the darogahs of the mofussil police jurisdictions, or the officers of outposts, are stationed, the duties of watching and patrolling are to be performed conjointly by the regular police officers and the village watchmen; and private watchmen entertained by individuals for guarding their habitations, shops, or warehouses, are also to afford their assistance, and are to be considered subject, in the performance of this duty, to the orders of the police darogah of the station. Reg. XX. 1817, sect. 21, cl. 9.

Chokeedars are to resist offenders to the utmost of their ability, and to require the headmen of the villages to assist them.

2180. On the occurrence of a gang or highway robbery, or any robbery by open violence, murder, burglary or theft attended with wounding, or any other heinous offence attended with a violent breach of the peace, the village watchmen are, to the utmost of their ability, to resist and endeavour to apprehend the offenders, and are to require the headmen of the village to collect the inhabitants, and to oppose and seize the criminals, or to pursue them if they have fled; and it is incumbent on the inhabitants of the villages through which or near to which the pursuit lies, to afford, on the requisition of the village watchman or other police officer, every practicable assistance towards the apprehension of the robbers or other offenders, and the recovery of any property stolen or plundered by them, continuing the pursuit from village to village. Any headman or watchman of a village, who is convicted before the magistrate of wilful inattention to such requisition, is liable to fine and imprisonment not exceeding the limits prescribed by sect. 19, Reg. IX. 1807.* Reg. XX. 1817, sect. 21, cl. 10.

Punishment of such in case of refusal.

* v. para. 705.

Police not to interfere to procure the payment of chokeedars' wages.
P.

2181. Any interference on the part of the police officers, either with or without the orders of the magistrate, to procure the payment of wages said to be due to the village chokeedars, is illegal. It is also illegal to compel the munduls and ryots to keep watch or

defined; and that, unless some distinct misdemeanor beyond neglect of duty is established, the case does not fall within the magistrate's discretion, under the general powers vested in him by sect. 19, Reg. IX. 1807. The limitation of punishment referred to, however, is a fine of "a sum equal to one month's salary, to be levied by a stoppage of the fixed allowance payable to such officer;" and it follows that this provision has no effect in the case of a chokeedar who receives no fixed salary from government; while it is equally clear that there are many cases of neglect and misconduct, which would not be sufficiently punished by the fine of a month's pay though hardly worthy of dismissal, and many in which no punishment but moderate imprisonment would produce the desired effect. According to the construction above quoted (No. 923) Reg. II. 1834, entirely repeals the following provision of sect. 6, Reg. III. 1812:—"Any palk, chokeedar, pasban, nigaban, or other description of watchman subject to the orders of any cutwal or darogah of police, who may hereafter be proved guilty of any gross neglect or misconduct in the discharge of his duty as a police officer (such neglect or misconduct not being of a nature which may render it proper that he should be committed or held to bail for trial by the court of circuit) shall for such offence be liable to suffer corporal punishment by sentence passed by the magistrate, not exceeding 80 stripes of a ratan, instead of the penalties of fine or imprisonment, provided the offender shall appear a fit object of corporal punishment, and the magistrate shall be of opinion that the infliction thereof will operate as a better example than the penalties of fine or imprisonment." The law therefore stands as it did before the enactment of the latter regulation; and, unless the incidental mention of imprisonment therein, and in Const. No. 923, can be construed to empower the magistrate to award imprisonment, either no punishment can be inflicted except the fine of a month's pay, or such cases must fall within the general powers of a magistrate notwithstanding the principle enunciated in Const. No. 244.

to go the rounds during the night within their respective villages: and police officers are required to refrain from such acts under pain of severe punishment. C. O. Sup. Pol. *L. P.* No. 14 of 1839, and No. 8 of 1841. Govt. order on police report for the first 6 months of 1838, page 230.

Munduls, &c.
are not to be com-
pelled to keep
watch.

2182. Reg. VII. 1819 does not apply to chokeedars, and the realization of their wages under that law is illegal. Reports *L. P.* 1854, part 1, page 260.

Wages not to be
realized under Reg.
VII. 1819.

2183. Crops grown on lands allotted to village chokeedars for their maintenance cannot be exempted from liability to sale, in satisfaction of decrees issued against their owners. Const. No. 1212.

Chokeedars'
crops are not ex-
empted from sale
in execution of de-
crees.

2184. In khas mahals under settlement, the magistrate is to arrange with the local settlement officer for the keeping up and payment of a sufficient number of chokeedars; it being the wish of government that the village police of khas mahals, that is, mahals the property of government, should be so manned, paid, and organized as to be a model to all surrounding estates. When the settlement is in progress, the magistrate is to inform the settlement officer whether the police are to be provided for in land or money, and what number of individuals is to be provided for in each village. On receiving the information, the settlement officer is to assign three acres of average good land to each chokeedar, and one acre to each bulahur, if the subsistence is ordered to be given in land; and three rupees a month to each chokeedar, and one rupee a month to each bulahur, if the subsistence is to be given in money. In the former case, the settlement officer is to cause a statement of the numbers assigned to the fields in the field map and khusrāh to be furnished to the magistrate. C. O. Sup. Pol. *L. P.* No. 11 of 1841. C. O. S. B. R. *L. P.* No. 44 of 1840, and No. 18 of 1841.

Rules for the es-
tablishment of cho-
keedars in govern-
ment khas mahals.

2185. Appeals from the orders of a magistrate, maintaining village chokeedars in possession of the lands set apart for their subsistence, lie not to the session judge but to the superintendent of police. The same rule is applicable to appeals from orders enforcing payment of their allowances in money or other kinds. C. O. No. 84 of vol. 4, *W. P.*

Appeals regard-
ing chokeedars'
chakran land and
payment of their
wages lie the
superintendent of
police.

SECTION VII.

RULES FOR THE CONTROL, MANAGEMENT, AND CONDUCT OF THE ROAD POLICE ON THE GRAND TRUNK ROAD.

2186. *Rule 1.* The magistrates, assistants, and deputy magistrates, through whose jurisdictions the grand trunk road passes, have the supervision and control of the road police within the limits of their respective jurisdictions. *Rule 2.* The deputy magistrates and assistants in sub-divisions on the road are required to visit the road police posts at least twice in every month, especially during the period between the 15th of October and the 20th of June. The magistrates of districts, if unable from other business to visit the road, will depute their assistants or other competent officers for that purpose. *Rule 3.* The magistrates, assistants, and deputy magistrates, will take care that their subordinates prevent

**Lower Pro-
vinces.**

Supervision and
control.

Deputies and
assistants to visit
the police posts
twice in every
month.

Obstructions to
be removed.

all obstructions, on the road, by the stopping of carts, trucks, or carriages. At the halting places, and elsewhere, carts and other carriages stopping are to be carefully drawn to one side of the road, and the centre kept sufficiently free to admit of two carriages at least passing abreast. *Rule 4.* Each station jemadar has the immediate charge and control of the sowars, burkundazes, and chokeedars within his beat. *Rule 5.* The burkundaz at each marhala shall require and cause the two chokeedars under him to patrol the road before daybreak East and West, until they meet the chokeedars of the adjacent marhalas, and then return to their post, reporting what they may have seen, or what has occurred. This patrol will be repeated during the day, again in the evening after sunset, and during the night. The magistrates, assistants, and deputy magistrates, will regulate the hours for patrol according to the season of the year. Nothing in this rule, however, shall be considered to diminish the responsibility of the police in respect of any occurrence taking place at any time whatever. *Rule 6.* The sowars will patrol East and West of the station-house to the limits of their jurisdiction. They will see that the burkundazes and chokeedars are at their posts, and have performed, or are performing their patrol; and they will report all circumstances to the jemadar on their return. *Rule 7.* The jemadar himself will frequently visit the different posts under his charge, and he will be held responsible if he fails to ascertain and report any neglect or misconduct on the part of his subordinates. *Rule 8.* In case of the death by sickness or otherwise in any chuttee, or on the road, of any traveller who may have no companions to take charge of his property, the burkundaz of the nearest marhala shall transmit the same at once to the jemadar, who will forward it with a report of the circumstances to his superior. *Rule 9.* In the case of any suspicious death, or of any corpse being found on the road, the body shall be, if possible, sent to the head quarters of the station or sub-division for medical examination. The jemadar is to proceed to the spot and send notice to the jemadars East and West, with a description of the person; and the police shall use every endeavour to ascertain by whom the deceased was last seen, and in what company. *Rule 10.* On the occurrence of any highway-robbery or dacoity on the road, the burkundaz of the marhala shall immediately despatch one chokeedar with intelligence to the nearest police station, and the other to the next marhala, whence the intelligence shall be conveyed from marhala to marhala until it reaches the road jemadar. The latter will proceed to the spot, and endeavour to procure a clue to the offenders; but on the arrival of the thana police, he will make over the inquiry to them, together with whatever information he may have obtained. *Rule 11.* On the occurrence of any crimes on the road, especially when travellers are concerned, the deputy magistrates and assistants will enter upon the case directly, so that the parties may suffer no unnecessary detention. If the case be within their competency, they will decide it at once; and if it be necessary to send the case to a higher tribunal, they will be most careful that only those persons whose evidence is absolutely required are detained from proceeding on their journey. *Rule 12.* The jemadars, burkundazes, and chokeedars, will caution travellers, and others moving by night with merchandize and goods, of the risk which they incur; but they are strictly prohibited from compelling travellers to stop at any particular place, and they will afford protection to such as may stay in their vicinity. *Rule 13.* The

Station jemadar.

Chokeedars to patrol.

Sowars to patrol.

Jemadar to visit posts.

Deaths of travellers.

Suspicious death.

Highway robbery or dacoity.

Adjudication of cases to be speedy.

Parties not to be detained unnecessarily.

Caution to travellers moving by night.

magistrates, assistants, and deputy magistrates, will warn all the road police to be on the alert regarding the passing of bodies of up-country men along the road, either in numbers or following each other, without much baggage or with only a lotah and clothes; and notice of such is to be forthwith sent to the assistant or deputy magistrate, who will take measures to stop and examine them. Immediately on the occurrence of a dacoity or robbery by a body of up-country men, notice will be sent by dāk to all the magistrates of districts and deputy magistrates on the road to the West of the place where the offence was committed, so that means may be taken by them to watch the bye-roads and the fords on the River Soane leading to Shahabad, and thus the offenders be stopped on their return. (a) *Rule 14.* The magistrates, assistants, and deputy magistrates, will take every opportunity of warning travellers against allowing strangers to attach themselves to their party, and to avoid eating, drinking, or smoking any thing from the hands of persons with whom they have been previously unacquainted. Should the jemadars observe any persons constantly going up and down the road and attaching themselves to parties, they will communicate the circumstance to their superiors, who will make such inquiries and pass such orders as may be requisite. *Rule 15.* In cases of emergency, the jemadars may despatch a sowar to carry information to the next station, whence another sowar shall proceed with the same to his superior; but, as a general rule, the sowars, burkundazes, and chokeedars, will be kept to their duties of patrol, protection of lives and property, and prevention of crime on the road. *Rule 16.* Should any of the jemadars, sowars, or others of the road police require temporary leave of absence, from sickness or on private affairs, they may be allowed to place their own nominees as substitutes whilst they are absent; provided that their superior sees no objection, and that such nominee is personally capable of performing the duties. *Rule 17.* All promotions shall be given as much as possible in the force, so as to give encouragement to the subordinate officers to evince activity vigilance and efficiency in the performance of their duties. *Rule 18.* Every man in the force may be transferred from one station to another at the discretion of the authorities. *Rule 19.* For the apprehension of parties who have committed offences on or near the road, or for any other police business relating to the road or its neighbourhood, the road police have concurrent authority with the police of the districts on either side. *Rule 20.* The marhalas and station houses of the road police will be white-washed, and over each will be painted in large letters, both in the English and native languages, its number and

Bodies of up-country men passing along the road.

Caution to travellers against strangers.

Suspected parties.

Expresses.

Leave of absence.

Promotions.

Transfer of officers.

Concurrent authority.

Stations to be white-washed and numbered.

(a) The mode of proceeding adopted by the Shahabad and Behar dacoits is as follows:—They set out from their villages to a place of rendezvous, and then go singly, or in small parties, down the road, generally with only lotahs, clothes, and a small sum of money amongst them. They supply themselves with lattees which are sold on the road-side, and they either send out spies to see what carts are coming, or they have informants at some of the chuttees. They commit their dacoities early in the evening, if they have opportunity, and immediately after make off with their plunder to the bed of some river or nullah in the jungles, in which they bury their booty, easing themselves round and near the spot, so as to prevent persons approaching it. Part of the gang then returns, or may go on to commit another robbery. Those with the booty, after staying near the place for a day, remove it, and proceed by bye-roads through the jungles to their homes, halting during the day on the banks of a stream, in the sands of which they conceal the property. If, therefore, timely notice of a robbery is sent to the authorities and districts Westward of the place of occurrence, there will always be some chance of recovering the property and securing part of the gang. The Shahabad dacoits have not been known to come on the road lower than Gulsee Chuttee.

Uniform of police. the name of the magisterial jurisdiction to which it belongs. The chokeedars, burkundazes, and sowars of the road police will wear red turbans and kumurbunds, with badges indicating their number and rank on red cross belts edged with green. The jemadars will have a red stripe on the right arm. Govt. Bengal, June 1853.

Western Provinces.

Measures to be taken for the supply of provisions, and for the protection of the travellers, and of the people from oppression on the part of travellers.

Encamping grounds.

Serais, police not to interfere with ;

and not to levy fees from travellers using.

Bhatiaras.

Marhalas.

Beat of chokeedars.

Chokees.

Thanas to be brought on the road.

Duty of chokeedars and burkundazes.

Travellers may be furnished with separate chokeedars, who are to be paid for.

Tuhseeldars vested with powers of deputy magistrate.

Duty if complaint be preferred to them.

2187. Rules have been laid down in the Western Provinces for the supply of provisions and for the protection of travellers along the grand trunk road ; and effectual measures are required to be taken in every district to protect the people from oppression on the part of civil and military servants of the government and other travellers who may pass along its course. Encamping grounds are prepared, and the collectors are required to see that proper supplies are provided at the burdasht-khanas. Zumeendars and others are encouraged to build serais ; and the police are strictly prohibited from interfering in regard to them, so as unduly to favor any party, or to derive to themselves a profit from the undertakings. Their watch is to be kept outside the buildings ; and they are not to enter them in their official capacity, unless to repress evident breaches of the peace, or otherwise in the execution of their regular duty. They are strictly prohibited from levying any dues from travellers who may alight at serais, or from compelling them to resort to particular places. Bhatiaras are to be protected in the fair exercise of their calling ; and measures are to be taken to enforce the same payments to them from government officers as are demanded from other individuals. Marhalas, close to the road, and consisting of two rooms and a verandah in front, are to be built at the distance of two miles the one from the other. Each marhala is to contain a burkundaz and two chokeedars, who are always to be present at night ; and each chokeedar, is to have charge of a mile's length of road immediately contiguous to the marhala on either side. Chokees of larger dimensions, and with accommodation for a jemadar, two sowars, and several burkundazes, consisting of six rooms, and stabling for two horses, are to be erected at convenient posts. The tuhseeldarees and thanas are to be brought as much on the grand trunk road as may be consistent with other public objects. It is the duty of the chokeedars and burkundazes to afford protection to all travellers with merchandize or goods, who may stay for the night at puraos or other established halting places in their vicinity ; but they must be strictly prohibited from compelling travellers to stop at any particular place ; nor must they be allowed to make any charge for the protection they afford. Travellers, who require separate chokeedars for the protection of their baggage or tents at the established encamping grounds, are to be furnished with them at a settled price by the officers of the collector's establishment who is stationed on the spot. For such chokeedars the established fee must be always paid. The tuhseeldars along the road are generally invested with the powers of deputy magistrates. In that capacity it will be their duty to see that all provisions are punctually paid for, and that all coolies and hired chokeedars receive their proper wages. In the event of any complaints being preferred to them of non-payment, or ill-treatment, on the part of troops or travellers, they will immediately bring the circumstances to the notice of the party, against whom the complaint is lodged, either verbally or in writing ; and, if the matter is not promptly and satisfactorily settled, they will take evidence of the facts, and will either dispose of the case themselves, or send a representation of it, with their

opinion, to the collector or magistrate, as may be necessary. They will further exert themselves to prevent all exactions on the part of the chokeedars, or burkundazes, or other officers of government on the road, whether directed against residents in the vicinity, traders or shopmen located on the road, or travellers passing along it. They will bring to the notice of the collector or magistrate all instances of misconduct of this nature, with their recommendation as to the proper notice to be taken of the offence. On the occurrence of any crimes upon the road, especially where travellers are concerned, it will be the duty of the deputy magistrates to enter upon the case directly, so that the parties may suffer no unnecessary detention. If the case be within their competency, they will dispose of it at once; otherwise they will send the criminal with the proceedings to the magistrate for his final orders, and will suffer all others, who are concerned in the case, and may be no further required, to pass on. The magistrate will pay particular attention to the characters of the police officers, who may be stationed along the road, and he will suitably encourage the deserving. The collector and magistrate himself, or one of his best qualified assistants, will make it a point to visit the halting-grounds, and the chokees, serais, and other public buildings, along the road as often as may be practicable; and during the cold weather some responsible person should, if possible, be charged with the duty of moving along the road, and seeing that existing rules are observed. Govt. Order *W. P.* No. 1695, April 28, 1848.

To prevent exactions.

Duty on the occurrence of any crimes on the road.

Magistrates to pay attention to characters of police officers; and to visit halting grounds, &c.

2188. A collector or magistrate, on receiving a well-supported complaint against an officer of the army or detachment of troops, should immediately send information of it to the nearest general officer commanding a division towards which the party complained against is moving. He should at the same time furnish the commissioner of the division with a copy of his representation. Govt. Order *W. P.* No. 3484, September 27, 1851.

Duty of magistrate on receiving complaint against an officer of the army.

2189. The resort to the puraos should be left absolutely free, and exempt from any demand of fee, to all travellers with their carts and goods. The chokeedars should be paid from the sale of the refuse; and a general superintendence over the puraos should be exercised by the nearest tuhsceldar or thanadar, so that the full value of such refuse may be obtained, and applied with a view to the most safe and convenient use of the enclosures. Govt. Order *W. P.* No. 70, January 6, 1855.

Puraos.

2190. It rests with the police to remove all obstructions, as carts, waggons, and carriages, with which the grand trunk road is sometimes encumbered, and which are of the nature of public nuisances; vehicles, of which the draft cattle are being changed, should be compelled to draw up in a single line on the side of the road, and to move on without delay as soon as the change is completed. In the large towns along the road, empty vehicles must not be allowed to stand on the high road opposite to the offices of the owners, or their agents; but should be removed from the road and kept in suitable yards maintained at the expense of the owners. Every effort should be made to induce the drivers of vehicles along the road to observe the rule of keeping the left hand side of the road except when passing other vehicles, which they should do on the right hand side. Govt. Order *W. P.* No. 87 A, December 13, 1852.

All obstructions to be removed by the police.

Vehicles to keep on the proper side of the road.

SECTION VIII.

RULES FOR THE CONTROL, MANAGEMENT, AND CONDUCT OF THE POLICE
ON THE JUGGERNATH ROAD, BETWEEN JELLASORE AND POOREE.

2191. *Rule 1.* The magistrates and deputy magistrates through whose jurisdictions the road passes, have the general supervision and control of the road police within the limits of their respective jurisdictions; the immediate control of the jemadars, burkundazes, chokeedars, (or paiks,) being vested in the thana darogahs. *Rule 2.* The magistrates and deputy magistrates are required to make arrangements for having occasional visits paid to the road police posts by themselves or their assistants, or other competent officers. These visits should be arranged so as to take the police unawares, and effectually test their vigilance. The thana darogahs are required to visit the road police posts at least twice in every month, and to report the result to the magistrate. *Rule 3.* Each jemadar has the immediate control of the burkundazes, chokeedars, (or paiks) within his beat. *Rule 4.* The head quarters of each jemadar will be at the central station of his beat, and he is required to visit every station within his control at least once in every 2 days, and to see that the burkundazes, chokeedars, &c., are on the alert. The jemadars will keep a diary of their proceedings. *Rule 5.* Two men from each station (whether burkundazes or chokeedars) will patrol the road in opposite directions every morning and evening, until they meet the patrol of the adjacent station; when they will return to their post, reporting what they may have seen, or what has occurred. The hours for patrol will be regulated by the magistrates according to the season of the year, and a diary will be kept at each station, in which will be entered the names of the patrolling officers, the hour of their departure from and return to the station, and their report of what has occurred. *Rule 6.* It is the duty of the road jemadars to watch the movements of suspicious characters, to take notice of all complaints of robbery, theft, and violence, occurring along the line of road within their respective beats, and to apprehend persons charged with the commission of such offences, giving immediate notice to the thana darogahs. *Rule 7.* In case of the death from natural causes of any traveller who may have no companions to take charge of his property, the burkundaz of the station nearest to the spot shall transmit the property without delay to the jemadar of the beat, who will forward it with a report of the circumstances to the thana darogah. The jemadar will enter all such property in a book to be kept for the purpose. *Rule 8.* In the case of any suspicious death, or of any corpse being found on the road with marks of violence on it, the body shall, if possible, be sent to the head quarters of the district or sub-division for medical examination. The jemadar is to proceed to the spot, and send notice to the jemadars on each side with a description of the person of the deceased, and the police shall use every endeavour to ascertain by whom he was last seen and in what company. *Rule 9.* On the occurrence of high-way robbery, dacoity, or other heinous crime on the road, the burkundaz
- Supervision and control.
- Magistrates and assistants to visit posts.
- Jemadar to visit stations,
- and to keep a diary.
- Patrols.
- Suspicious characters.
- Death from natural causes.
- Suspicious death.
- Highway robbery, or other heinous crime.

of the station shall immediately despatch one chokeedar with intelligence to the thana and another to the next station, whence the intelligence shall be conveyed from station to station, until it reaches the road jemadar. The latter will at once proceed to the spot and endeavour to procure a clue to the offenders, but on the arrival of the thana police, he will make over the inquiry to them, together with whatever information he may have obtained.

Rule 10. On the occurrence of any crimes on the road, especially where travellers are concerned, the magistrates and deputy magistrates will enter upon the case directly, so that the parties may suffer no unnecessary detention.

Parties not to be unnecessarily detained.

Rule 11. It is the duty of the road police to prevent all obstruction to the road by the stopping of carts, or otherwise. At the halting places, or elsewhere, carts, and other carriages stopping are to be carefully drawn to one side of the road, and the centre kept sufficiently free to admit of two carriages passing abreast.

Obstructions to be removed.

Rule 12. The jemadars, burkundazes, and chokeedars, are strictly required to afford protection to all travellers who may stop in their vicinity.

Protection to travellers.

Rule 13. In cases of emergency, the jemadars may despatch a burkundaz or chokeedar to carry information to the next station; but, as a general rule, the burkundazes and chokeedars will be kept to their duties of patrol, protection of lives and property, and prevention of crime on the road.

In emergent cases, information may be sent by officers.

Rule 14. Should any of the jemadars or burkundazes of the road police require temporary leave of absence (not exceeding a month) on account of sickness, or urgent private affairs, they may be allowed to place their own nominees as substitutes whilst they are absent, provided that their superior sees no objection, and that such nominee is personally capable of performing the duties. If leave of absence for a longer period than one month is required, the nomination will rest with the magistrate.

Leave of absence.

Rule 15. All promotions shall be given as much as possible in the force, so as to give encouragement to the subordinate officers to evince activity, vigilance, and efficiency in the performance of their duties.

Promotion.

Rule 16. Every man in the force may be transferred from one station to another at the discretion of the magistrate.

Transfer of officers.

Rule 17. For the apprehension of parties who have committed offences on or near the road, or for any other police business relating to the road or its neighbourhood, the road police have concurrent authority with the police of the districts on either side. Govt. Order Bengal, No. 477, March 3, 1854.

Concurrent authority.

CHAPTER III.

OF POLICE DUTIES.

SECTION I.

OF RECORDS, DIARIES, AND REGISTERS TO BE KEPT AT THE THANA.

Regulations of government to be preserved, and promulgated.

2192. The police darogahs and mohurirs are enjoined to bind up separately from all other records, and to preserve with care, the several regulations of government, which are sent to their respective thanas; and they are also to cause the same to be publicly read for general information, and to take every favorable occasion of promulgating the rules therein contained. Reg. XX. 1817, sect. 8, cl. 1.

Rules for keeping, and inspecting the thana books and registers, by darogahs and mohurirs on receiving charge, and by the magistrate and his assistants.

2193. The books and registers, alluded to in the following clauses of this section, are to be kept up with regularity at the several police thanas; and darogahs and mohurirs on their appointment to police stations, are required to inspect the records, and to report to the magistrates on the general state of the thana papers within ten days of receiving charge. Every police darogah, or thana mohurir, receiving charge of the records of a police station, is to sign a list of the records delivered over to him, which is also to be signed by the officer delivering over charge; and the list so authenticated by their joint signatures is to be transmitted to the magistrate. An exact counterpart, authenticated in the same way, is to be kept at the thana. The magistrates and their assistants, and the joint magistrates, who occasionally visit the thanas, are to avail themselves of any opportunities that may offer to inspect the records; and in the event of their being found defective, or of any gross neglect in the care of them, the darogah and mohurir, who appear culpable, are to be liable to dismissal, or to a fine, according to the circumstances of the case. Reg. XX. 1817, sect. 8, cl. 2.

Punishment of neglect.

Blank books to be furnished for diaries.

2194. The police darogahs are severally to be furnished with blank books for diaries: each book containing 100 pages, to be signed and numbered by the magistrate's assistant, if on the spot, or in his absence by the serishtadar, or other head ministerial officer of the magistrate's court. Reg. XX. 1817, sect. 8, cl. 3.

In which every occurrence is to be noted.

2195. Every occurrence which is brought to the knowledge of the officers of police is to be entered in the thana diary on the day on which the event is communicated to the thana; and, if no incident be communicated, it is to be so noted in the diary. Reg. XX. 1817, sect. 8, cl. 4.

Particulars to be entered therein, when persons are apprehended.

2196. The darogahs are to enter in their diaries the names of all persons whom they apprehend, the crime or misdemeanor with which they are charged, the date of their apprehension, and the date on which they are dispatched to the magistrate. Reg. XX. 1817, sect. 8, cl. 5.

2197. The purport of every petition, representation, complaint, or information presented to any officer of police, is to be recorded in the diary, whether the same is cognizable by the native officer of police or otherwise: and if it is proved that a darogah has apprehended any person, or issued orders, or done any official act, which he has not inserted and truly stated in his diary, or that any occurrences have been wilfully omitted, he is to be punished by dismissal from office, or by such other penalty, as the circumstances of the case appear, under the general regulations, to require. Reg. XX. 1817, sect. 8, cl. 6.
- The purport of every petition, &c. to be entered therein.
Penalty for omission or misrepresentation.
2198. Every entry made in the diary is to be attested by the signature of the individual by whom it is recorded. Reg. XX. 1817, sect. 8, cl. 7.
- Entries how to be attested.
2199. The officer presiding at the thana is to be careful to report to the magistrate at least a month before the diary books are likely to be written through, in order that fresh blank books may be furnished to the thana without delay. Those diary books which are completed are to be deposited in the records of the thana. Reg. XX. 1817, sect. 8, cl. 8.
- Report for new diary books, when required.
- 2200.. A book is to be kept containing copies of all urzees, kyfeeyuts, reports, and returns made by the officers of the thana establishment to the magistrate's court. Reg. XX. 1817, sect. 8, cl. 9.
- Books to be kept for copies of reports to magistrate;
2201. A book is to be kept containing copies of all perwanas, and orders of every description, received from the magistrate's court. Reg. XX. 1817, sect. 8, cl. 10.
- for copies of magistrate's orders;
2202. A book is to be kept containing copies of all chalans, or despatches of prisoners and property forwarded to the magistrate's court, drawn out agreeably to the forms Nos. 2 and 3 (Nos. 12 and 13 of appendix C). Reg. XX. 1817, sect. 8, cl. 11.
- for copies of chalans;
2203. An abstract register is to be kept of robberies, and other heinous offences, ascertained to have been committed within the jurisdiction of the thana, in each month, drawn out in the form No. 4 (No. 14 of appendix C).* Reg. XX. 1817, sect. 8, cl. 12.
- for register of heinous offences;
2204. A book is to be kept containing copies of all lists of stolen property delivered into the thana by prosecutors and others. Reg. XX. 1817, sect. 8, cl. 13.
- * v. para. 2209 et seq.
for copies of lists of stolen property;
2205. A register is to be kept, according to the form No. 5 (No. 2½ of appendix B), of offenders who have broken jail, or have otherwise eluded the pursuit of justice, and for whose apprehension orders have been received at the thana from the magistrate's court. Reg. XX. 1817, sect. 8, cl. 14.
- for register of firars;
2206. A list is to be kept of the names of the villages comprised within the limits of the thana, showing the names of the proprietors and of the village watchmen, agreeably to the form No. 6 (No. 19 of appendix B). Reg. XX. 1817, sect. 8, cl. 15.
- and for list of villages.

SECTION II.

OF RETURNS, REPORTS, AND STATEMENTS, TO BE FURNISHED BY
POLICE OFFICERS.

Extract from
diary and abstract
register of heinous
offences, to be sent
monthly to magis-
trate ;

2207. An extract from the thana diary, and from the abstract register of robberies and other heinous offences (No. 4 above prescribed), containing the entries during the month, is to be prepared *verbatim*, and transmitted to the office of the magistrate on or before the 5th of every ensuing month. Reg. XX. 1817, sect. 9, cl. 1.

and also a list of
thana officers en-
titled to pay.

Rules for their
payment.

2208. Together with such monthly reports, the darogahs are to forward, under their official signature, and in charge of a burkundaz, a list of the police officers on the thana establishment, entitled to receive pay from government for the past month, after the form No. 7 (No. 22 of appendix B). This list the burkundaz is to deliver to the treasurer of the foudaree court, on his receiving the pay of the thana establishment, which is forthwith to be conveyed to the darogah, or other police officer in charge of the thana, who is to pay the amount due to the several individuals of the establishment, and to transmit their receipts with his own in a paper corresponding in substance with the form above mentioned, to remain with the records of the magistrate's court. Reg. XX. 1817, sect. 9, cl. 2.

Rules for pre-
paring abstract
monthly statement
of heinous crimes.

2209. In preparing the abstract monthly statements of heinous offences, according to from No. 4 (No. 14 of appendix C), the darogahs are to pay strict attention to the following rules. Reg. XX. 1817, sect. 9, cl. 3.

Classification of
wilful murder and
homicide ;

2210. The darogahs are, as far as is in their power, to distinguish wilful and malicious murder (*kutl-and*) from every other species of homicide, reporting all cases of murder not accompanied with robbery or burglary under the 5th head, and cases of homicide of every other description, excepting homicide in affrays, under the 11th head of the statement. Reg. XX. 1817, sect. 9, cl. 4.

of malicious
wounding, or vio-
lent corporal in-
jury ;

2211. Under the 6th head the darogahs are to insert all cases of wounding, or violent corporal injury inflicted maliciously, and not in the prosecution of robbery or burglary, or during an affray. Reg. XX. 1817, sect. 9, cl. 5.

of affrays, riots,

2212. Under the 12th head of the statement all affrays and riots are to be entered, in which any considerable number of persons has been concerned, or in which any person has been killed or wounded, and the public peace has been disturbed ; but it is not necessary to include in this column cases of assault and battery, or drunken broils, in which only a few individuals have disputed, and no very serious personal injury has been sustained. Reg. XX. 1817, sect. 9, cl. 6.

and broils ;

of the various kinds
of burglary ;

2213. Under the 13th and 14th heads of the statement all cases are to be entered, in which any person enters or attempts to enter by day or by night, by breaking into any dwelling-house, warehouse, storehouse, or other building or place used for the custody

and preservation of property, whether the same be constructed of stone, brick, mud, bamboo, grass, or other materials, or into a tent, boat, or other place of habitation, whether such entry be effected by cutting through or under the wall, or by forcibly raising the roof of the house, or by any other means attended with breaking, and whether in pursuance of the intent to commit such robbery any property be carried away or otherwise. Reg. XX. 1817, sect. 9, cl. 7.

2214. Under the 17th head all cases are to be entered of receiving, vending, or concealing, or melting down stolen property. Reg. XX. 1817, sect. 9, cl. 8. of receiving stolen property ;

2215. The 18th head of the statement is to include only those cases of arson, in which any habitation or other property appears to have been purposely and maliciously fired ; and the darogah is not to include accidental fires under this head. Reg. XX. 1817, sect. 9, cl. 9. of arson and accidental fires ;

2216. Under the concluding or 20th head of the statement, the darogah is to insert all cases in which the person destroyed appears to have been the immediate and voluntary cause of his own death. Reg. XX. 1817, sect. 9, cl. 10. and of suicide.

2217. The darogahs are to report in the statement above prescribed all heinous offences which come to their knowledge, whether the offenders are apprehended or otherwise ; and are to distinguish in the third column all attempts in which the criminal intent has failed, inserting in the second column only those cases in which the crime has been actually perpetrated. Reg. XX. 1817, sect. 9, cl. 11. All heinous offences are to be reported, and attempts distinguished.

2218. A monthly report of crimes and offences, agreeably to the form No. 4 (No. 14 of appendix C) is to be transmitted by the darogahs from each thana to the superintendent of police for the division, on or before the 5th of the ensuing month. Reg. XX. 1817, sect. 9, cl. 12. Monthly report to be sent to superintendent of police.

2219. The reports and returns submitted by the police officers to the magistrates are to be written in a clear and legible hand, and are to bear at the foot of the writing the date of the despatch, according to the era current in the district, and the signature of the police officer by whom the report is made, and, when the circumstances admit, the seat of the thana : all examinations taken and proceedings held are to be superscribed with the date and month of the era current in their several jurisdictions. Reg. XX. 1817, sect. 9, cl. 13. Rules for writing and dating reports, returns, and examinations.

2220. The papers transmitted by the police officers to the foudjaree court are to be strung on a thread, the ends of which are to be secured with wax ; and the record of each case is to be made up in a separate envelope, and addressed to the magistrate of the district ; the name of the thana, from which the report is made, is to be marked on the envelope. Reg. XX. 1817, sect. 9, cl. 14. Rules for the transmission of papers to the foudjaree court.

2221. Every process and order addressed by a magistrate to a police officer is to limit a certain time, in which it is to be served, executed, and returned to the magistrate's court. Reg. XX. 1817, sect. 9, cl. 15. Magistrate to limit the time for the execution of each order.

2222. The returns to all orders and processes, and the certificates of the due publication of all proclamations, addressed by the magistrates to the police officers, are to be endorsed, as far as the size of the paper will admit, on the original order or process ; and if Returns to orders to be endorsed as far as possible on the back of

the original perwana: and registered.

the length of the return renders it necessary, a separate piece of paper is to be annexed to the original document; and a copy of the return is to be entered in the register prescribed in cl. 9, sect. 8, of this regulation (para. 2200). Reg. XX. 1817, sect. 9, cl. 16.

If delay in making returns to order is unavoidable, the cause is to be reported at the expiration of the given time.

2223. The police officers are, to the extent of their ability, to carry into effect such instructions as they receive, within the period specified in the magistrate's order; and if the directions contained in the order or process cannot be entirely carried into effect within the time limited, a report is to be made, at the expiration of such period, of the cause of delay, with specific information when a further and a full return will be made; and the original order or process is to be sent to the magistrate, with such final return, endorsed as directed above. Reg. XX. 1817, sect. 9, cl. 17.

Reports to be accurate and concise.

2224. The darogahs and mohurirs are to be careful to render their reports and returns in as precise terms as possible, and they are to refrain from recapitulating in their returns a detail of the magistrate's orders; and, when referring to such orders, are merely to state summarily the nature of the case and the date of the perwana. Reg. XX. 1817, sect. 9, cl. 18.

If the returns to perwanas are unnecessarily long, the police officer is liable to punishment

* v. para 2066.

Every important occurrence is to be noted.

2225. No precise rules can be laid down for the returns to perwanas; but any police officer, unnecessarily taking up the time of the magistrate with long reports, is to be entered in the minor register*; and such conduct, if persisted in, should cause dismissal. C. O. No. 138 of vol. 3, rule 7. *L. P.*

2226. The police officers are to report concisely, but clearly, all important occurrences which take place within their jurisdiction, considering that an important part of their duty. C. O. No. 138 of vol. 3, rule 8. *L. P.*

But all reports are to be abridged as much as possible.

* See paras. 2281 et seq.

2227. The magistrates are to enforce the observance of the rules laid down in C. O. No. 138 of vol. 3,* for abridging the proceedings of police officers. These rules being deemed of much importance, the magistrates are expected to be particularly careful that they are not neglected, and to call to account such officers as may persist in not conforming to them. The session judges are to avail themselves of every opportunity to point out to the magistrates any instances of neglect of the rules in question, which they may observe when they have occasion to refer to the proceedings of the police in cases committed to the sessions or called for by them. C. O. No. 23 of vol. 4. *L. P.*

Thana reports to be sent direct to the superintendent.

2228. Darogahs are to transmit their thana reports direct to the superintendent of police, and not through the magistrate. C. O. Sup. Pol. *L. P.* No. 5 of 1840.

Serious cases only are to be reported by darogahs to the superintendent.

2229. Darogahs are to report to the superintendent of police at the time the occurrence of serious cases only, such as murders, dacoities, affrays, highway robberies, and heavy burglaries and thefts in which a prosecution is desired by the person whose property has been stolen. C. O. Sup. Pol. *L. P.* No. 23 of 1843.

SECTION III.

OF THE ZUMEENDAREE DAK.

2230. To facilitate the communication between the magistrate's court and the stations of the darogahs, and to enable the magistrates to obtain speedy information of the occurrence of crimes, as well as with the view of preventing the unnecessary confinement of persons, who are detained in custody pending an inquiry of the police officers, or trial before the magistrate, the magistrates and native officers of police are required to attend, as far is practicable, to the directions contained in the following rules. Reg. XX. 1817, sect. 10, cl. 1.

Importance of facilitating communication.

2231. The superintendence of the despatch by dāk of perwanas to the darogahs, and of reports from the officers of police to the magistrate's court, is to be entrusted to the nazirs of the criminal courts and to the thana mohurirs, who are to be held responsible for the speedy transmission of the packets to and fro ; and are to report to the magistrates all instances of delay which come to their knowledge. Reg. XX. 1817, sect. 10, cl. 2.

Superintendence of dāk vested in nazirs and thana mohurirs.

2232. As far as circumstances admit, the magistrate's orders to his police officers, and the thana reports, whether addressed to the magistrate or to the superintendent of police, are to be transmitted by the government dāk ; and all dāk officers in the Company's provinces are required to receive and convey, free of expense, such orders and reports, the same being superscribed with the name and official designation of the public officer by whom the papers are despatched, together with the words "Kar Sirkar" to denote that they relate to the public service. Reg. XX. 1817, sect. 10, cl. 3.

Official orders and reports are to be transmitted free of expense.

2233. In cases where a thana is situated at a considerable distance from the route of the government dāk, the magistrates in communication with their police officers are to establish dāk stations between the thanas, or from the thanas to the magistrate's court at proper distances, according to local circumstances, but not in any instance exceeding five coss ; and the land proprietors and farmers of land, or their local managers, are to be called upon to name and appoint the requisite number of peons or paiks (not being village watchmen) for the performance of this duty. In places where no establishment of regular police officers is stationed, they are also to be required to fix on a particular house in the village where the peons or paiks may at all times be found without delay, and to name the mundul, putwaree, or other person in the village, whose business it is to be to receive and forward the papers transmitted by the dāk. A statement after the form No. 8 (No. 23 of appendix B) is to be kept up at each thana ; and it is the duty of every darogah, on his appointment to a thana, to see that this paper is included in the records of the thana, as well as that the dāk for the conveyance of the magistrate's perwanas and the thana reports is duly regulated, and the peons or paiks maintained by the landholders, farmers, or managers, at the appointed stages. Reg. XX. 1817, sect. 10, cl. 4.

Establishment of subordinate dāk stations.

Peons and paiks to be appointed by landholders, and dāk houses to be established.

Darogah to see that the establishment is properly regulated.

Nizamut adawlut cannot exempt landholders from contributing to the establishment; but magistrate may exercise his discretion.

2234. The nizamut adawlut have no authority to sanction the exemption of landholders paying a small revenue to government from contributing to the expense of the establishment of dâk runners; but the magistrate, in enforcing the above provisions, is to exercise his discretion according to the circumstances of each case, leaving the party dissatisfied to appeal. Const. No. 728.

Putneedars are not exempt.

2235. Putneedars are included in the terms of the above provision, and are therefore liable to be called upon to perform the duties referred to therein. Const. No. 1364.

Landholders neglecting the rules how punishable.

2236. The landholders, proprietors and farmers of land, with their local managers and heads of villages, are to be held responsible for a due observance of the foregoing rules, and are to be liable on proof before the magistrate of wilful disregard of these provisions, especially after a previous admonition, to be punished by a fine not exceeding 100 rupees, commutable in default of payment to confinement in the civil jail for any period not exceeding one month. Reg. XX. 1817, sect. 10, cl. 5.

Appeals from orders of magistrate lie to session judge.

2237. Appeals from the orders of a magistrate, enforcing penalties under the above provision, lie to the session judge, and not to the superintendent of police. Const. No. 1307.

Date of despatch and time of receipt to be noted on the envelope by the nazir;

2238. The nazir of the magistrate's court is to forward by a dâk every day at the same hour (except when otherwise specially instructed by the magistrate) all perwanas and papers addressed to the respective thanas, which the magistrate directs to be transmitted by the dâk; and is to write on the envelope of each packet the date and time of despatch. It is likewise the duty of the nazir to record on the envelope of all reports received from the thanas the date and time of their receipt. Reg. XX. 1817, sect. 10, cl. 6.

and by the mohurir; who is to address all envelopes to the magistrate.

2239. All reports and papers transmitted by the dâk from the police thanas are to be addressed to the magistrate, and the seal of the thana is to be affixed to the envelope; the mohurir is to specify on the envelope the date and hour of despatch; and in cases where the papers of one thana are left at another thana on their transit to and from the magistrate's station, the mohurir of the latter thana is to forward such papers, noting on the back of the envelope the date and hour of the arrival and departure of the dâk. Reg. XX. 1817, sect. 10, cl. 7.

Police officers are to receive for transmission by the dâk the reports of moonsiffs.

2240. The darogahs and mohurirs are required to forward by the thana dâk, or by the hands of their burkundazes, as occasions offer, such reports and papers as are sent to them by the moonsiffs for the purpose of transmission to the judge of the district; and they are to grant receipts to the moonsiffs for such papers as are delivered to them. Reg. XX. 1817, sect. 10, cl. 8.

Rules for receipt and transmission of moonsiffs' records by the police officers.

2241. The subordinate judicial officers are to forward the records of monthly decisions to the nearest thana for transmission to the sudder station, taking a receipt from the darogah, or in his absence from the head officer present at the thana; and it is the duty of the darogah to despatch the papers in question without delay to the sudder station under charge of a burkundaz. In the *Western Provinces*, the darogah is to indent on the magistrate for the expense incurred in the conveyance of such papers, and to submit to the judge a duplicate of the account for his information; and the items of expense so incurred

Expense incurred how to be recovered.

are to be charged in the monthly contingent bills of the magistrate's office. In the *Provinces*, the judicial officers are to provide the requisite coolies for the conveyance of the records, and are to indent on the judge for the expense incurred thereby: and a chalan under the signature of the judicial officer, exhibiting the date of transmission to the thana and the number of misls, is to accompany the records for the purpose of showing whether there has been any delay on the part of the police in forwarding them to the sudder station. C. O. No. 162 *W. P.* and No. 192 *L. P.* of vol. 3.

2242. The above order is not to be acted upon at those moonsiffie stations, at which there is a government dāk for the transmission of letters and parcels. C. O. Sup. Pol. *L. P.* No. 5 of 1845.

This rule does not apply where there is a government dāk.

2243. *Rule 1.* Wherever any local establishment may be maintained for the conveyance or delivery of the police, revenue, or other official communications, it shall also be made use of for the conveyance and delivery of private correspondence, and be designated a district post. *Rule 2.* All office or road establishments, attached to any district post, will be under the control and management of the officer to whom they may be entrusted by the local government. *Rule 3.* Such police stations and other public offices, as may be selected by the local government, shall be constituted district post offices; but this shall remain under the management and supervision of the same officials who are at present in charge of them. *Rule 4.* A letter box, with a slit in the top or side shall be fixed in a conspicuous place *outside* of every district post office. The words "letter box," in English and the vernacular of the district shall be painted on each box in legible characters. [Due precaution must be taken to have the boxes properly secured to the wall. C. O. Government *Bengal*, No. 21, June 6, 1855.] *Rule 5.* All letters (except those to be specially registered,) intended for despatch from any district post office, must be dropped into the letter box. No receipt will be given. Every letter posted at a district post office must have its proper postage stamp affixed to it. *Rule 6.* Any person wishing to post a registered letter at any district post office can do so on payment of a registry fee of four annas, in addition to the ordinary postage chargeable on the letter, according to its weight. A receipt in the proper form must, in all cases, be given to the poster of a registered letter, whether it be demanded or not. One anna of the registration fee will be allowed to the officer registering the letter, the remaining three annas must be sent with the letter by the same day's despatch to the nearest post office. *Rule 7.* Every district post office will be supplied by the post office department with registered letter covers, forms of receipt and of register, and with the rules relating to registered letters. *Rule 8.* Except when it may be opened for the purpose of taking out the letters preparatory to their despatch, the letter box shall remain locked, the key being in custody of the person in charge of the office. *Rule 9.* Fifteen minutes before the hour at which the despatches of the office are usually made up, the letter box will be opened and the letters in it taken out. Those addressed to places to which there is a direct communication through the district post will be separated from all other letters, sorted and packed in covers addressed to the officer in charge of the district post office from which they will be delivered. The remaining letters will be made up into one packet and addressed to the nearest post office with which he has a communication. *Rule 10.* A

Rules relating to the receipt, despatch, and delivery of letters by district posts.

Control.

District post offices.

Letter box.

No receipt given.

Registry.

Letter box to remain locked;

and to be opened 15 minutes before despatch.

Chalans ;

chalan or letter bill in the vernacular (Form 1)(a) will be sent with every packet despatched from a district office to a post office. The deputy post master or person in charge of the post office will, after satisfying himself that the contents of the packet agree with the chalan, copy the entries into his register, sign, and by the next day's despatch return the chalan. The receipted chalans will be filed and form the only record in any district post office of the despatches made from it. **Rule 11.** All chalans are to be numbered consecutively in a series, commencing on the 1st of May; and if any district post office is in the habit of sending packets to more than one post office, the chalans sent to each post office will be numbered in a separate series. **Rule 12.** All letters sent from one district post office to another will be accompanied by a chalan (Form 2),(b) which will be receipted and returned

to be numbered ;

(a)

Form 1.
DISTRICT POST.

CHALAN No. .		District Post Office to		District Post Office.				
Letters despatched from		Dated		of 185 .				
No. of Letters.		No. of Rates of Postage.	POSTAGE.					
			Despatching Office.			Receiving Office.		
	Paid Letters,							
	Paid Newspapers,							
	Registered Letters,							
	Total,							
			C. D., Post Master.			A. B., Post Master.		

N. B.—The receiving officer is invariably to enter the correct amount in the column of postage, whether it agrees with the despatching office or not.

(b)

Form 2.
DISTRICT POST.

CHALAN No. .		to the Post Office at		. . .				
Letters despatched from the District Post Office at		Dated		of 185 .				
No. of Letters.		No. of Rates of Postage.	POSTAGE.					
			Despatching Office.			Receiving Office.		
	Unpaid Letters returned,							
	Unpaid Newspapers returned,							
	Total,							
	Paid Letters posted at this Office,							
	Paid Newspapers ditto ditto,							
	Paid Letters returned,							
	Paid Newspapers returned,							
	Registered Letters returned,							
	Total,							
			C. D., Post Master.			A. B., Post Master.		

N. B.—The receiving officer is invariably to enter the correct amount in the column of Postage, whether it agrees with the despatching office or not.

to the despatching office, to be filed as a record. *Rule 13.* All letters received at any post office, to the address of persons resident in the same district, but beyond the limits of any ordinary post delivery, will, if the post office be at the head-quarters of the district, be sent with a chalan (Form 1) to the officer in charge of the district post, to be by him sorted and forwarded to the district post offices of the several sub-divisions in which the residence of the addressees may be situated. *Rule 14.* Persons in charge of post offices in the interior of districts receiving letters for persons residing beyond the limits of their ordinary delivery, but within the sub-division of a district post office with which they have direct communication, will send them, if pre-paid, for delivery to that office, with a chalan (Form 1)(a). Letters for persons resident in the district, but within a sub-division with which the receiving office has no direct communication, must be sent to the post office of the head-quarters of the district. All letters bearing postage for delivery in the interior must be sent to the post office at the head-quarters of the district. *Rule 15.* Officers in charge of district post offices will carefully compare with the chalan the contents of every packet received. If the chalan is correct, it will be receipted and returned; if not correct, the discrepancies will be noted thereon. *Rule 16.* A delivery book (Form 3)(c) showing the names of persons entrusted with the delivery of letters, will be kept in every district post office, and be the only record of letters received for delivery. *Rule 17.* Letters will be delivered by such persons and under such rules as the local government may from time to time determine. Every person, through whom any district post letter may be delivered, is authorized to receive a fee of one pice (a fourth of an anna) for his own use, in addition to any unpaid postage which may be due on it. *Rule 18.* All postage realized on letters sent from any post office for delivery through the district post will be remitted every Saturday to the post office at the head-quarters of the district with the remittance

Letters received at post office for residents beyond ordinary delivery.

Contents of packet to be compared with chalan.

Delivery book.

Fee for delivery.

Postage realized.

(c)

Form 3.

DISTRICT POST.

CHALAN No. .

Letters despatched from the Post Office at

to the District Post Office at

Dated

of

185 .

No. of Letters.		No. of Rates of Postage.	POSTAGE.	
			Despatching Office.	Receiving Office.
	Paid Letters,			
	Paid Newspapers,			
	Paid Registered Letters,			
	Unpaid Newspapers,			
	Unpaid Letters,			
	Total,			
			C. D., Post Master.	A. B., Post Master.

N. B.—The receiving officer is invariably to enter the correct amount in the column of postage, whether it agrees with the despatching office or not.

office, will be prepared by the person in charge and sent on the 2nd of the following month to the officer in charge of the post office at the head-quarters of the district. Persons in charge of post offices will prepare similar memoranda and send them to the post office at the head-quarters of the district. The officer in charge will, before the 15th of each month, prepare a general statement showing the number of letters posted at, and delivered through the agency of the district post office in the preceding month. Order Govt. India, August 12, 1854.

2244. A supply of postage stamps, for sale by retail, is to be kept available at every thana, and every police station at which letters are received for despatch; and it is the duty of the officer, to whom the person in charge of any such station is subordinate, to take steps to ensure that the supply kept on hand is at all times equal to at least one week's demand. No account current of postage stamps is to be kept at any subordinate depôt. Officers in charge of treasuries, when selling stamps to other venders for distribution to the public, are invariably to require cash on delivery. To all purchasers of stamps of the value of nine rupees or more an allowance is to be made of four annas from every nine rupees paid. Rule passed by the Govt. of India in C. O. Asst. Acct. Revenue No. 837, July 29, 1854.

Supply of postage stamps to be kept at every police station.

SECTION IV.

OF IRREGULAR PRACTICES.

2245. No police darogah, mohurir, jemadar, or burkundaz, is to trade or to keep any warehouse, or shop for wholesale, or retail, within the limits of the thana to which he is appointed. Reg. XX. 1817, sect. 11, cl. 1.

Police officers are not to trade;

2246. The practice of police officers taking leases of land from the zumeendars of the district is prohibited. Any act of this kind is to be considered tantamount to an act of corruption; and the person guilty of it is to be removed altogether from the police force. C. O. Sup. Pol. L. P. No. 7 of 1840.

nor to take leases of lands from the zumeendars of the district.

2347. The darogahs are prohibited from employing the burkundazes of their thanas on their own private affairs, under penalty of fine and dismissal from office. Reg. XX. 1817, sect. 11, cl. 2.

Darogahs not to employ burkundazes on their private affairs.

2248. Whenever a summons or warrant, or other criminal process, is served by a burkundaz, or other police officer receiving pay from government, no diet money or other allowance or gratuity is to be demanded or received from the complainant or the accused, or from any witness or other person; and the demand or receipt of such by any police officer, directly or indirectly, in violation of this rule, is punishable as a criminal offence

Police officers demanding or receiving money from any parties in a criminal process, are liable to what penalties.

on conviction before the magistrate or sessions court. The offender is also compellable, either on a criminal prosecution, or by a civil action, to refund the amount received, besides being liable to immediate dismissal from office, under the provisions contained in the existing regulations. Reg. XX. 1817, sect. 11, cl. 3.

Darogahs are not to be entertained in the villages they visit.

2249. Magistrates are to prevent the custom of the inhabitants of a village entertaining the darogah and ~~many~~ numerous followers, when he proceeds into the interior. C. O. No. 321 vol. 1.

Landholders are not to be allowed to keep established vakeels at the thanas.

2250. The darogahs are enjoined, under the penalty of dismission from office, not to permit any established vakeel or mokhtar to be permanently employed at their thanas on the part of any landholder, farmer, local agent, or other person. But this rule is not meant to preclude the occasional employment of a vakeel, or mokhtar, for any specific purpose when it is necessary. Reg. XX. 1817, sect. 11, cl. 4.

Police officers are not to employ mokhtars at the magistrate's office, without permission.

2251. The darogahs and other police officers are prohibited from employing any mokhtar or vakeel at the station of the magistrate, for the purpose of receiving and transmitting the salaries of the thana establishment, or for any other purpose connected with their public functions, except in particular cases, wherein they are especially authorized by the magistrate to employ a vakeel. Reg. XX. 1817, sect. 11, cl. 5.

Police officers are not to employ extra mohurirs, without permission, except in special cases.

2252. No mohurirs or writers, excepting those on the police establishments paid by government, are to be employed at the thanas without the previous sanction of the magistrate, except in cases of emergency which will not admit of delay. In the event of any darogah requiring the assistance of additional mohurirs, in consequence of a stress of business, he is to report the circumstance for the orders of the magistrate. Reg. XX. 1817, sect. 11, cl. 6.

Penalty for disobedience to this rule.

2253. In all cases where an additional mohurir is employed improperly (for in some instances it may be necessary) the darogah should be punished first by fine, and, if the offence is repeated, by dismissal. Letter of Superintendent Police L. P. to Joint Magistrate of Pubna No. 1944, Sept. 14, 1849.

Police officers are not to employ professional spies; and are to apprehend persons giving out that they are employed by the magistrate as goindahs. But they are to encourage persons to give information.

2254. The darogahs are prohibited from encouraging, or employing, without the express sanction of the magistrate, any goindahs or spies, who earn a livelihood by the profession of an informer; and they are to apprehend, and send to the magistrate, any persons who give out that they are employed as goindahs by the magistrate, or by the superintendent of police, unless such persons show a written authority from the magistrate or from the superintendent of police. The above provision is not to be construed as precluding the police officers from employing persons to trace offenders, who have eluded the pursuit of justice; or from encouraging persons to furnish information, by which robbers or other known criminals may be discovered and apprehended. On the contrary the darogahs are to encourage such persons to communicate all the information possessed by them, and are to report to the magistrate any instance of meritorious service on the part of any such individual, by which offenders are brought to justice, whether the individual has personally exposed himself to trouble and risk in securing the offender, or has merely

supplied the necessary intelligence to the police officers.(a) Reg. XX. 1817, sect. 11, cl. 7.

2255. It has been a general practice for bawds, keepers of brothels, and other persons who retain young females for the purposes of prostitution, and for persons moving loundis, or alleged slave girls, from place to place, to register at the nearest thana the names of all those, whom they purchase, procure, or entice to remain with them. Darogahs and other police officers are strictly prohibited from keeping any such register, or allowing any list of such girls to be delivered to, or the girls to be brought before them at any place whatever, as such a practice leads to a belief that the police have authority to interfere with such persons, and to give their alleged owners an illegal power over them, while it is besides open to many other kinds of very gross abuse. Any police officer disobeying this injunction is to be immediately and finally removed from his situation. C. O. Sup. Pol. L. P. No. 18 of 1841.

Police officers are not to allow the registration before themselves of girls kept for the purposes of prostitution.

2256. Any police officer apprehending the female relations or connections of persons accused of offences, or detaining them in custody on insufficient grounds, is to be punished by fine or removal from office; and any officer punished more than twice for this offence is to be removed altogether from the police, and the case reported to the superintendent of police in order to prevent his future employment. C. O. Sup. Pol. L. P. No. 9 of 1842.

Female relations of persons accused of offences are not to be apprehended.

2257. Police officers are prohibited from interfering in regard to the transfer of cattle and other goods bought and sold. Const. No. 747.

Interference in the transfer of cattle and goods is prohibited.

2258. The system of compelling all dagees and tekorahts to sleep under the surveillance of the police, or zumeendars, is prohibited. Govt. order on the police report for the first six months of 1838, page 230. C. O. Sup. Pol. L. P. No. 14 of 1839.

Dagees are not to be made to sleep under surveillance.

SECTION V.

OF CHARGES NOT COGNIZABLE BY POLICE OFFICERS.

2259. Darogahs and other native officers of police are prohibited, under pain of dismissal from office, from taking cognizance of any charge of adultery, fornication, calumny, abusive language, slight trespass, or inconsiderable assault. Reg. XX. 1817, sect. 12, cl. 1.

Of what offences police officers are prohibited from taking cognizance.

(a) "I also wish, but I fear in vain, that the darogahs without encouraging goindahs could be induced to pay some attention towards the acquirement of knowledge of their jurisdictions, so as to have some idea of those amongst the community who live by plunder and theft. I believe that the agricultural classes in these provinces are not, unless driven to the act by famine, addicted to crime, but that they are more free from such pursuits than the generality of the same class in other countries. It is the lower castes, given to drinking, separated from the rest of the people, and degraded in all their habits from the prejudice against them, who are the principal participators in the graver offences against property, and in burglaries and thefts. These men are well known to the village communities; their herdings together, sudden accession of money always spent in debauchery, cannot be concealed; but unfortunately from this class our chokeedars are principally drawn; and it is owing to this village watch, and to the apathy or worse of the police in making enquiries regarding them, that so many crimes are committed with impunity." Extract from police report L. P. for the first 6 months of 1841, para. 708.

Charges of abortion not to be investigated by the police unless death ensues.

2260. Charges of abortion, or of procuring it, are not of a heinous description, unless death ensues; and, where this is not the case, such cases partake of the nature of those specified above, and should therefore not be investigated by police officers without the special orders of the magistrate. In general the investigation of such charges should be conducted by the magistrate, rather than by the police officers. C. O. No. 303 of vol. 1. N. A. R. vol. 1, page 349 *note*.

2261. Such charges may not be entered into by police officers, although the enquiry originated in the discovery of the body of a murdered infant, the one case having no connection with the other. N. A. R. vol. 2, page 464.

Application of the above rule to charges of rape.

2262. Although rape is among the offences which the magistrate is prohibited from referring to the police by Reg. VII. 1811, yet, as it is not mentioned in the above provisions among the charges not cognizable by them, such case may now be legally referred to them for investigation, or may be preferred directly at the thana. Const. Nos. 1174, and 1365.

No enquiry to be made in cases of accidental fires.

2263. Police officers are strictly prohibited from making any inquiries into the circumstances of fires, except when charges of arson are preferred to them. C. O. No. 85 of vol. 2.

Police not to interfere in petty offences required by the regulations.

2264. Police officers are not to interfere with petty offences in any way which is not positively required by Reg. XX. 1817, or other regulation enacted for their guidance. C. O. No. 331 of vol. 1.

Police officers how to proceed on such charges being preferred.

2265. Persons preferring to the native police officers charges of the nature specified above, are to be referred by those officers for redress to the magistrate's court, and informed that cognizance cannot be taken of their complaints at the thana; and the darogah or other police officer, to whom any such charge is presented in writing, is to record in the thana diary (*v. para.* 2195) the name of the complainant, the nature of the charge, and the date on which it is rejected. The date and ground of rejection is also to be endorsed on the written plaint to be returned to the complainant. Reg. XX. 1817, sect. 12, cl. 2.

Police not to admit compromises, nor to interfere in any matter not authorized, nor to inflict punishment, nor to exact money.

2266. The darogahs and other police officers are likewise prohibited from admitting compromises, or razeenamahs, in any cases; and from interfering in any matter which is not expressly provided for in this, or in any other regulation; as well as in all cases from passing sentence upon any complaint; from imposing a fine, or inflicting any punishment; and from making any exaction from the prosecutor or the accused, or their respective witnesses, or from any other persons whatsoever. Reg. XX. 1817, sect. 12, cl. 3.

Heinous offences are not to be settled by private adjustment.

2267. Police officers are prohibited from suffering accusations of heinous offences^(a) to be settled by private adjustment; and are enjoined to bring all such cases to the knowledge of the magistrate. In this case, the prisoner allowed a thief to compound his offence; but his motive in so doing not being considered corrupt, he having officially reported the circumstances, he was merely reprimanded. N. A. R. vol. 1, page 180.

(a) In cases of theft and burglary, the person defrauded is now not obliged to prosecute; and it seems that in such cases under the present law compromises are to a certain extent allowable. See para. 2276.

SECTION VI.

OF CHARGES COGNIZABLE BY POLICE OFFICERS.

2268. On receipt of any charge or information of murder, robbery, theft, burglary, homicide, maiming, wounding, actual affray, or other heinous offence, not excepted by this regulation from the cognizance of the police darogah, the statement of the prosecutor or informer is to be certified on oath, or solemn declaration* [after the forms Nos. 5 and 6 of appendix C]; and such enquiry is to be made as is necessary to elucidate the circumstances of the case, and if there are any witnesses to the fact, or persons acquainted with the particulars, they are to be questioned, without oath, either privately and apart, or publicly, as appears most conducive to the attainment of the truth. Reg. XX. 1817, sect. 13, cl. 1.

Enquiry to be made into the circumstances of the case, and witnesses to be examined.
* v. para. 501.

2269. Police officers are strictly prohibited from receiving criminal charges unattested by oath [solemn affirmation]. A strict adherence to which rule, particularly in a case like the present [abortion], appears essential for the protection of individuals against malicious and unfounded accusations. N. A. R. vol. 1, page 349.

The charge must be made upon oath.

2270. As the offences of forgery, or procuring the commission of it, come clearly within the general description of heinous offences, not excepted from the cognizance of a police darogah on a charge or information on oath to that effect before him, he is bound to proceed to the investigation of such charge in conformity with the general rules prescribed for his guidance. C. O. No. 303 of vol. 1.

Darogah must investigate all cases not excepted from his cognizance.

2271. In cases of burglary and theft, unattended with personal violence, it is not lawful for darogahs or other police officers to make the local inquiry heretofore required by sects. 13 and 15, Reg. XX. 1817, or to apprehend persons suspected of such offences, unless a petition on unstamped paper is presented to them by an individual injured, (a) requesting that a search may be made for the property stolen, or that the offender or offenders may be brought to punishment; or unless an express order to adopt measures for those purposes is received by them from the magistrate to whom they are subordinate. Reg. II. 1832, sect. 2, cl. 2.

Police officers cannot investigate cases of theft or burglary without written request for prosecution.

2272. It is not sufficient that the complainant appears in person and deposes to the theft or burglary; he must present a written petition, and that petition must contain not only a statement of the fact, but also a specific request either that search may be made for the stolen property, or that the offenders may be apprehended and brought to punishment. Const. No. 708.

The petition requiring interference of police in such cases must be written.

2273. The proceedings on a trial of simple burglary were declared void *ab initio*, in consequence of the investigation having been conducted in contravention of Reg. II. 1832; as no petition had been presented by the prosecutor, nor had any instructions to investigate

In cases of burglary, the proceedings are illegal without a petition, or the order of the magistrate.

(b) By Mahomedan law a thief cannot be punished even on his own confession, unless the person robbed comes forward to prosecute. *Hed. Trans. vol. 2, page 112.*

the case been issued by the magistrate; and the prisoners were therefore acquitted. N. A. R. vol. 6, page 35.

The suffering parties need not report simple cases of burglary and theft.

2274. In cases of burglary and theft unattended with personal violence, the suffering party is not bound to report the case to the police, unless he is a zumeendar, and has to report the occurrence in that capacity. Const. No. 1338.

Chokeedars are to report all cases which come to their knowledge.

2275. Chokeedars are not exempted by these rules from the duty of reporting the commission of such offences to the police, who are still bound to report all cases that come to their knowledge to the magistrate. But the magistrate should make use of other sources of information than his police officers to discover crimes, and should use his utmost endeavors, by conciliation and kindness, to procure the co-operation of respectable landholders and their agents in the detection of offenders. C. O. No. 130 of vol. 2.

When darogahs may refrain from apprehending and forwarding prisoners accused of theft or burglary.

2276. Darogahs and other police officers are empowered to postpone apprehending and forwarding to the magistrate, pending the receipt of his orders, persons charged with theft, whether attended with burglary or otherwise, provided it appears that the offenders have not used any personal violence in the occurrence; and provided that the parties, against whom the offence has been committed, express their desire that the offenders should not be apprehended and conveyed before the magistrate; provided also that the offenders have not previously been actually guilty of, or suspected of, having committed theft, or burglary, or robbery. Reg. XII. 1818, sect. 7, cl. 1.

But every such case is to be reported to the magistrate, who is to decide whether it is to be investigated.

2277. Every case of this nature is to be fully and immediately reported by the police officers to the magistrate, who is either to call for any further information which he judges proper, or is at once to determine, according to the circumstances of the case, whether it is or is not necessary for the ends of justice that the charge should be regularly investigated, and is to issue his orders accordingly. Reg. XII. 1818, sect. 7, cl. 2.

The magistrate may always direct inquiry to be made.

2278. Though a police officer cannot make enquiry into unaggravated cases of burglary and theft without a written application from the injured party, yet the magistrate may direct the police officer to make the enquiry whenever he considers it advisable to do so.(a) Const. No. 1354.

By what circumstances the discretion of the magistrate is to be guided in such cases.

2279. In the exercise of that discretion the magistrate is to be governed by any extenuating circumstances which appear, such as the youth of the offender, his having been prompted to the offence (more especially in times of scarcity and famine) by extreme distress, and by his character appearing to have been previously respectable. Under less favorable circumstances the magistrate is also to attend to the important object of preserving the honor of families, when the offender is nearly connected with the party who has suffered

(a) "Indiscriminate investigation into these cases is never productive of good effect, whilst it inflicts much inconvenience on the people." *Opinion of Sup. Pol. in police report for the 2nd six months of 1841, para. 5.* In some districts the provisions of Reg. II 1832 are almost entirely set aside, and in others no cases are investigated but those in which the parties apply to the court. Both these modes of carrying the law into effect are, I think, equally erroneous. The magistrates should in cases coming under this law exercise the discretion vested in them with great care, and only direct investigation where the offence is of a serious or aggravated character, or where the occurrence of numerous crimes, in particular divisions of the district, renders their interference necessary for the repression of the offence and greater security of property. *Police Report for the first six months of 1840, para. 853.*

the injury, and the latter is anxious to exempt the offender from the infamy of a public ignominious punishment. Reg. XII. 1818, sect. 7, cl. 3.

2280. It is not to be considered necessary to take down in detail the questions and answers of the witnesses, but the substance of any material information obtained from them is to be reduced to the form of a sooruthal or kyfeeyut, which document is to be authenticated by the attestation of the persons examined, and transmitted to the magistrate under the signature of the police officer, by whom the inquiry is made; the evidence of the eye-witnesses being distinguished in the report from that of persons deposing from hearsay. Reg. XX. 1817, sect. 13, cl. 2.

Rules for the recording of evidence by the police officers.

2281. In all cases cognizable by the police, the depositions of the informant or plaintiff, or of both, are to be immediately taken at length; the police officers being careful to enquire from them particularly what they saw themselves,—what they learnt from others,—who the persons were from whom they learnt it,—the prosecutors' witnesses, and what evidence each witness is supposed to be capable of giving. In cases of dacoity, highway robbery, theft, and burglary, the list of property lost must invariably accompany the plaintiff's deposition; and the above papers must be forwarded to the magistrate immediately on being received, or at the latest within 12 hours from the period of their being written. C. O. No. 138 of vol. 3, para. 3, rule 1; L. P. and No. 28 of vol. 4, W. P. C. O. Sup. Pol. L. P. No. 19 of 1843.

Depositions of the informant and plaintiff to be taken at length; and what particulars to be noted.

2282. With a view to test the trustworthiness of the final police report, the police officer should be required, in all heinous cases to transmit to the magistrate a separate statement on the day on which he may obtain information as to any new material witnesses, or as to a charge or suspicion being made against or found to attach to a fresh party accused; showing briefly the nature of such information, with the parties from whom, and the circumstances under which it was obtained. Such reports of progress could not afterwards be tampered with, a contingency not infrequently to be apprehended in the instance of the final reports. But they should be confined to the express point designed to be made known, and should not be allowed to swell the papers of a police enquiry or to protract its duration. C. O. No. 1047, August 10, 1854. W. P.

Immediate report to be made of any fresh information or ground of suspicion.

2283. The sooruthals required in sects. 14 and 15, Reg. XX. 1817, or in cases of dacoity describing the appearances presented, and the facts brought to light in a *primâ facie* inquiry, are to be sent to the magistrate, in place of a report, the moment they are drawn up. C. O. No. 138 of vol. 3, para. 3, rule 2; L. P. and No. 28 of vol. 4, W. P.

Sooruthal to be sent to the magistrate immediately in place of report.

2284. The depositions of witnesses are not to be detailed in the papers sent to the magistrate, and the summary of them is to be given in the simplest form. For example, in a case of highway robbery with murder:—

Summary of depositions of witnesses.

Nuzzer Allee, Peer Bux, and Govindram deposed to having witnessed the deed;—

Doorga, Ewoz Jan, and Ruttun recognize the property;—

Sheolal and Gooroo Das witnessed the search of the prisoner's house;—

Sujut Ali and Gungadeen saw the prisoner running off with a drawn sword in his hand;—

Janokia Dosadh Chokeedar arrested the prisoner, and saw marks of blood on his clothes.

At the bottom of this summary, the darogah is to enter the names of those witnesses whom he examined, but who professed ignorance, or gave evidence so unimportant as not to require their being sent in. C. O. No. 138 of vol. 3, para. 3, rules 4 and 5; *L. P.* and No. 28 of vol. 4. *W. P.*

Rule regarding witnesses for the defence.

2285. It is not the duty of a thanadar to send for witnesses for the defence, or to postpone a case for their attendance. Still where, in particular cases such exculpatory evidence might be of itself forthcoming or near at hand, and it should appear proper to record it with a view to a fuller elucidation of the facts, and where such procedure should not involve the illegal detention of the accused beyond 48 hours, there is nothing in the regulations prohibitory of the adoption of such a course. Govt. Order *W. P.* No. 2217, May 23, 1855.

Grounds for sending in prisoners to be noted in the chalan.

2286. In sending in the prisoners, at the close of an enquiry, the darogah is to enter his grounds for so doing (without any recapitulation of evidence) in the column for remarks on the chalan No. 2 of appendix to Reg. XX. 1817 (No. 12 of appendix C). C. O. No. 138 of vol. 3, para. 3, rule 6; *L. P.* and No. 28 of vol. 4. *W. P.*

Reports to be concise and clear; and all delays to be severely punished.

2287. The darogahs are informed that all excuses for delay in preparing and copying out voluminous reports being obviated by the above rules, any breach of the regulations in the detention of arrested persons, or any slowness in the enquiry, will be severely dealt with. They are also to report concisely, but clearly, all important occurrences which take place within their jurisdiction, considering that an important part of their duty. C. O. No. 138 of vol. 3, para. 3, rule 8; *L. P.* and No. 28 of vol. 4, *W. P.*

Magistrates and session judges to see that the rules for abridging police proceedings are not neglected.

2288. Magistrates are to be particularly careful that these rules for abridging the proceedings of police officers are not neglected, and should call to account such officers as persist in not conforming to them. The session judges should avail themselves of every opportunity to point out to the magistrates any instances of neglect of these rules, which they may observe in proceedings before them. C. O. No. 23 of vol. 4. *L. P.*

What report is to be made in cases which are not proved.

2289. In cases when the darogah does not think the case sufficiently proved to warrant the transmission of the accused parties to the magistrate, he is to send in the *substance* of the evidence of each witness; the statements of the plaintiff and defendants, the latter taken at length; and a clear statement (without recapitulating any evidence) of the grounds of his opinion for releasing the accused. C. O. No. 138 of vol. 3, para. 3, rule 9; *L. P.* and No. 28 of vol. 4. *W. P.*

In certain cases a sketch of the spot is to be prepared; and date and time of occurrence to be noted.

2290. In cases of murder, gang-robbery, burglary attended with wounding, or other violent crime, [or of a charge or information of any of the offences specified in sect. 16, Act XXXII. 1855, regarding embankments*] where the circumstances of the case may be elucidated in a greater degree by a sketch or plan of the spot, the same is to be prepared, if it can be done without subjecting the inhabitants to inconvenience, and submitted with the report. The police officers are also to be careful to ascertain, in all cases, the exact date and time of the day or night when the offence charged was committed; and are to record the date according to the Bengal, Fussily, or other era current in the district. Reg. XX. 1817, sect. 13, cl. 3.

* See sect. 19 of that Act.

2291. Attention is required to the preparation of these sketches; a scale should be adopted for the purpose of showing the relative distance of one object from another. A house and a tree need not be represented by precisely the same diagram. These are to be sent to the nizamat adawlut with all cases referred or appealed. C. O. No. 52 of vol. 4. *W. P.*

Such sketches to be prepared with care.

2292. The weapon or instrument with which a murder has been committed, or the remains of poisoned food, or other articles which it will be necessary to produce and identify during the proceedings, must be obtained and secured in such a manner that their identification may be established without doubt. Reg. XX. 1817, sect. 14, cl. 10. Reports *W. P.* 1854, part 2, page 766.

Identification of articles to be produced in court.

2293. Darogahs are prohibited from swearing witnesses to the truth of their depositions on any local investigation which is made by them into the circumstances of any murder, robbery, or other crime, or in the performance of any other of their duties, unless the same is expressly sanctioned by the provisions of a regulation applicable to the case. Reg. XX. 1817, sect. 13, cl. 4.

Darogahs are not to administer oath except in particular cases.

2294. The officers of police are to endeavour, as far as practicable, to complete the inquiry in the first instance, and to collect all attainable evidence, and to bind over all the witnesses, necessary for the trial, to appear before the magistrate, at the time when the report may reach the magistrate's court, in order that the case may be tried without unnecessary delay. The darogah is to send in with the chalan or despatch any burkundazes, or other subordinate police officers, whose evidence is necessary on the trial of the case; and if the whole of the witnesses cannot be found at the time of transmission of the chalan, the darogah is to endeavor to collect them, and is to send them in without waiting the instructions of the magistrate. Reg. XX. 1817, sect. 13, cl. 5.

Darogahs are to endeavour to collect all evidence, and to secure the attendance of witnesses so as to prevent delay.

2295. In cases where the offenders are unknown, or though recognized have not been apprehended, the prescribed local inquiry is notwithstanding to be made without delay, and the police darogah is to transmit an immediate and full report of the result to the magistrate for his information and orders. But the witnesses are not in such cases to be sent to the magistrate, nor bound over to attend him without his special instructions for the purpose. Reg. XX. 1817, sect. 13, cl. 6.

When the offenders are unknown, the witnesses are not to be sent in without the order of the magistrate.

2296. In all cases where the offender is known and has absconded, the police officer conducting the enquiry is to ascertain and describe the person of the offender, specifying also his name, and that of his father, as well as his usual place of residence, in order that he may hereafter, if necessary, be fully identified. Reg. XX. 1817, sect. 13, cl. 7.

Description of absconded offenders to be carefully given.

2297. If, in the conduct of an inquiry, the person accused or suspected appears to have been guilty of more than one offence cognizable by police officers,—or if any misconduct or neglect in matters of police attaches to any zumeendar, farmer, local agent, village watchman, or other person whose duty it is to aid the police,—the darogah is to institute a distinct enquiry on each case, the result of which is to be transmitted to the magistrate in separate reports and despatches. Reg. XX. 1817, sect. 13, cl. 8.

Separate report if two offences are proved, or if zumeendar or chokeedar is guilty of neglect.

2298. Whenever any person is apprehended and sent to the magistrate's court under the provisions of this regulation, and it is known to the darogah, or other officer presiding

When defendant has been formerly

apprehended, it is to be noted,

at the thana, that such person has been apprehended on a former occasion by the police on any other account, the darogah reporting on the case, which is the ground of his present apprehension, is also to state the offence for which the prisoner was arrested, and if practicable is to ascertain from the thana papers and report the year and date of the record of the case referred to. Reg. XX. 1817, sect. 13, cl. 9.

Rules when darogahs leave their thanas.

2299. The darogahs, when they proceed from their thanas for the purpose of making any local inquiry, or for the performance of any other public duty, are to state in their reports the date and time of their departure from the thana station, and the date and time of their arrival at the place of their destination, and also of their return to the thana. The month and year to be used on all such occasions, as well as generally in the reports of the darogahs, are to be those of the current era of the district, whether the Bengallee, Fussily, or Willaity. Reg. XX. 1817, sect. 13, cl. 10.

Dates to be noted in the current era of the district.

Darogahs may leave their thanas without permission.

2300. The system of prohibiting darogahs from leaving their thanas without permission, except on the occurrence of heinous offences, is bad, and ought not to be pursued. Govt. Order on police report for 1st six months of 1838, page 226.

When darogahs are away from their thanas, they are to send daily reports to the magistrate.

2301. The darogah when engaged in the mofussil is to forward daily to the magistrate a memorandum of his proceedings in the most concise form. For example :—" May 2, 1843. Passed the night in the village cutcherry at Sydepore ; at 10 A. M. proceeded to Mouzah Ramnugger, and examined the putwarree, head ryots and others, named in the margin, regarding the bad characters in their village, and their whereabouts on the night of the robbery : returned to Sydepore at 5 P. M."—" May 3, 1843. Arrested Sheo Lal, and Deen Tewaree ; took their replies, and confronted them with the plaintiff Gungadeen and the witnesses named in the margin, who recognized them as concerned in the dacoity ; searched their houses, and found property as per list recognized by the prosecutor and his witnesses." C. O. Sup. Pol. L. P. No. 19 of 1843.

What reports are to be sent by the darogah to the superintendent of police, in serious cases.

2302. On proceeding to investigate any serious case, the darogah is to send forthwith to the superintendent of police a notice of his departure, stating the nature of the crime, the name of the accused as far as then ascertained, and the names of the persons or person giving the information.* On closing the case he is to report, if he has sent in any prisoners in the form No. 2 of Reg. XX. 1817, the parties sent in, the dates of their several apprehensions, and other circumstances laid down in that statement ;—or if he has not procured evidence to justify his sending in the accused, he is to forward to the superintendent, in as concise a form as practicable, the grounds on which he has exercised his discretion, in such manner as to avoid all recapitulation of evidence and unnecessary verbiage. It is the duty of the magistrate to keep a strict watch over the proceedings of his subordinates, so as to be able to furnish the superintendent of police with such information regarding their proceedings as he thinks necessary to call for. C. O. Sup. Pol. L. P. No. 13 of 1843.

* See para. 2229.

Magistrate to keep a strict watch over his police.

Remarks of the superintendent of police on the propriety of magistrates' ordering second investigations.

2303. With regard to the mode of investigating cases the superintendent of police recorded the following remarks. " The description of cases wherein the police are apt to misbehave is generally in regard to suspicious deaths, accusations of miscarriage of females by drugs, and other similar crimes. In such cases the statements sent in by the police

are often of a doubtful nature, and it is perfectly justifiable and right to order a second investigation; but there should be no threat, and no indications to lead the people entrusted with the second inquiry to believe that their credit and service depend upon proving the case instead of proving the truth. To order investigation after investigation, and to punish the darogahs for want of success, not only tends to induce the belief that the case has been made up for the nonce, but destroys the possibility of any credit being given to evidence, although in reality correct and true." Police report for the 1st six months of 1838, para. 79. Reports *W. P.* 1854, part 2, page 253.

2304. It is not favorable to the ends of justice to censure, suspend, or supersede police officers, who may have been unsuccessful in the early detection and development of a crime with the investigation of which they are charged; such failure of success by no means necessarily implying neglect or defect of good management; and urgent authoritative requirements for further enquiry, and for the acquisition of good proof, being capable of being misconstrued and abused on the part of the police officer in the production and presentation of very doubtful if not actually false evidence. C. O. No. 1047, August 10, 1854. *W. P.*

Remarks on the punishment of police officers for want of success.

SECTION VII.

OF INQUESTS.

2305. In all cases of murder, unnatural or suspicious death, or violent and dangerous wounding, the darogah is to make it an invariable rule, immediately on receiving information, to repair in person to the spot on which the dead body, or person wounded, has been found; or, if prevented from going personally, is to depute a proper officer; and on such occasions the following rules are to be strictly observed. (a) Reg. XX. 1817, sect. 14, cl. 2.

On receiving information in certain cases the darogah is to proceed to the spot.

2306. They are to question privately in the first instance any relations, connections, friends, or neighbours of the deceased, or of the person wounded, who may be able to state the circumstances of the case; and they are to endeavour to collect, before the inhabitants assemble for the public inquest, such information as may guide their inquiries in the conduct of their investigation. Reg. XX. 1817, sect. 14, cl. 3.

Private inquiries to be made before holding inquest.

2307. They are to question the individual wounded, and to require him, if he is able to speak, to name and describe on solemn affirmation the person by whom he has been wounded, the names of the persons present when the act was committed, and, generally, the circumstances under which the act was committed. Reg. XX. 1817, sect. 14, cl. 4.

Persons dangerously wounded to be examined.

(a) When a person is found dead in any place, and it is not known who was the murderer, and his heir demands satisfaction for his blood from the inhabitants of such place, or from any number of them not specifically named, fifty of the inhabitants selected by the heir must be put upon their oaths, and depose to this effect—"By GOD I did not kill him, nor do I know his murderer." *Hed. Trans. vol. 4, page 427.*—The above describes the only inquest known in Mahomedan law.

Rules for inspecting the body of deceased or wounded person.

2308. They are to examine the body of the person wounded, or dead body, with a view to ascertain the number of wounds or other corporal injuries; the length, breadth, and depth of each; with what weapons the wounds or hurts have been given, and the parts of the body in which they have been received; and they are to record the same either at the foot of their sooruthal or report, or on a separate paper to be annexed to the report. Reg. XX. 1817, sect. 14, cl. 5.

Wounds not to be probed.

2309. The practice of probing wounds on the bodies of wounded or deceased persons in order to ascertain their length, breadth, and depth, is prohibited: police officers are expected to report these particulars merely from inspection. C. O. No. 9 of vol. 4.

Rules for inspecting the spot in which the body of deceased or wounded person has been found.

2310. They are to describe particularly the spot on which the wounded person or the dead body has been found; and they are to report whether the crime appears to have been committed on the spot, or whether the individual wounded, or dead body, appears to have been brought and laid there; also in cases of alleged suicide or accidental death, whether the circumstances under which the body is found are such as to warrant a conclusion, that the deceased met with his death from his own hands, or by misadventure, or whether any and what grounds exist for believing the deceased to have been killed by the hands of others; and further, they are to ascertain the name of the person wounded, or of the deceased, if any person present should recognize him. Reg. XX. 1817, sect. 14, cl. 6.

If the deceased be a stranger.

2311. If the person killed appears to be a stranger, and his name is not known, they are to endeavour to ascertain where he was last seen, or where he slept the night before. Reg. XX. 1817, sect. 14, cl. 7.

If the offenders are unknown, to ascertain whether any person bore enmity to the deceased or wounded person.

2312. In cases in which the offenders are not immediately discovered, or the cause of the murder, or unnatural death, or wounding, is unknown, the police officer conducting the inquiry is to endeavour to trace whether any enmity, ill-will, jealousy, or other cause of dissension, subsisted between the wounded, or deceased, and any other person or persons in the neighbourhood, and, if so, the particulars of the disagreement; when and under what circumstances the wounded person, or the deceased, and the person said to bear him ill-will were last seen in company, and whether any and what angry expressions were used by the parties; moreover in cases, in which there is reason to believe that the unknown offender has received any wound or other corporal injury from resistance in the perpetration of the crime, they are to question the hajjams, village-surgeons, washermen, or other persons residing in the vicinity, who from their profession are likely to afford information leading to the discovery of the offender in such cases. Reg. XX. 1817, sect. 14, cl. 8.

Enquiries to be made when the unknown offender has been wounded

The above inquiry to be written as a sooruthal, and sent to the magistrate,

2313. The above inquiry is to be made and committed to writing in the presence of creditable people, resident on the spot or in the neighbouring villages; and the police officers are to require a sufficient number of persons present to subscribe their names to the paper, which is likewise to be attested by their own signature, and forwarded without delay to the magistrate. Reg. XX. 1817, sect. 14, cl. 9.

immediately, in place of a report.

2314. The sooruthal above required is to be sent to the magistrate, in place of a report, the moment it is drawn up. C. O. No. 138 of vol. 3, para. 3, rule 2; *L. P.* and No. 28 of vol. 4. *W. P.*

2315. In cases of murder it is the duty of the police officers to endeavour to obtain and secure the weapon or instrument with which the crime has been committed, in order that the same may be produced, and identified, at the further stages of the enquiry or trial for the offence. Reg. XX. 1817, sect. 14, cl. 10.

In cases of murder the weapon not be procured.

2316. In cases of wounding, the police officer conducting the inquiry is to endeavour to obtain for the person wounded such surgical assistance as is procurable; and, if the wounds are severe, the individual wounded is not to be moved or sent to the magistrate's court, until he is able to travel without inconvenience or risk. The police officers are further directed to notify to the inhabitants, as occasion offers, that, in the event of any person being wounded by robbers or others, in such manner that he cannot be conveyed to the thana without hazard of his life, it is not necessary to remove such person from the place where he can be best taken care of, but that immediate notice is to be given at the thana, that the police officer may proceed to the spot and make the inquiry prescribed above. Reg. XX. 1817, sect. 14, cl. 11.

Assistance to be procured for a wounded person, who is not to be moved, until he is able to travel without risk.

2317. In cases of murder or unnatural death, the Darogah is, on ordinary occasions, when he has completed his inquiry, either to make the body over to the charge of the relations of the deceased, or to cause it to be buried or burnt on the spot, as the usages of the country and the religious persuasion of the deceased render proper: and it is not to be considered necessary to send the corpse for the inspection of the magistrate, except in cases of murder by poison, or on occasions where the injury sustained by the deceased is of a doubtful nature, requiring the inspection and report of a surgeon; in which cases, if the state of the weather and the distance of the magistrate's court admit of the body being transported without risk of putrefaction on the road, the darogah is to forward the corpse covered with a cloth, in the most decent and expeditious manner practicable, to the magistrate's place of residence.* Reg. XX. 1817, sect. 14, cl. 12.

Disposal of body in cases of murder or unnatural death.

* For rule for guidance of police of subdivisions in such cases, see para. 795.

2318. On all occasions when the timely attendance of the police officers cannot be obtained, the principal persons of the village are to hold inquests on the bodies of persons dying unnatural deaths; and they are to forward the same without delay to the magistrate either through the nearest police darogah, or otherwise, as may be most convenient. C. O. No. 21 of vol. 1.

Principal persons of village to hold inquest in the absence of police officers.

SECTION VIII.

OF INQUIRIES IN HEINOUS OFFENCES.

2319. In all cases of gang robbery, or other robbery by open violence, as well as in every instance of a heinous crime, attended with a violent breach of the peace or other circumstances of aggravation, the darogah, in whose jurisdiction the offence occurs, is if practicable to proceed in person to the spot without delay, transmitting an immediate report of the occurrence and of his departure from the thana for the information of the

In cases of dacoity or other heinous crimes the darogah is to proceed to the spot.

* For reports to be sent to the superintendent of police, see para. 2802.

magistrate.* If unable to proceed in person, or if the case is not of a heinous nature, nor attended with circumstances of aggravation, the darogah is at liberty to depute a fit person from among the officers acting under him, to ascertain the facts and circumstances of the case, and to procure all the information which it is practicable to obtain for the discovery and apprehension of the offenders.(a) Reg. XX. 1817, sect. 15, cl. 1.

Notice to be sent by the police direct to the superintendent.

2320. Notice of all heinous offences, and other information ordered to be furnished to the superintendent of police by the darogahs, is to be forwarded direct by the public dâk. C. O. Sup. Pol. L. P. No. 5 of 1838.

Detail of inquiries to be made in such case.

2321. The police officer, making local inquiries of the description specified above, is to be careful to ascertain and record the day and hour when the fact was committed, the situation of the place, the names and descriptions of any persons who have been recognized as the perpetrators of the crime, by whom such persons have been seen and known, and the names and descriptions of any persons suspected of being concerned in the offence committed, with the grounds of such suspicion. Also a full recital of the manner in which the crime has been effected, and in cases of robbery of the articles of property plundered; the direction in which the robbers have fled; whether they had torches, and any and what arms; whether they attempted to conceal their persons during the robbery; whether any arms or articles of property belonging to the robbers were picked up after the outrage; and if so, whether any person in the neighbourhood has recognized such articles; whether any number of persons were known to have assembled at any liquor shop, fakeer's muth, or other place, immediately preceding the occurrence of the robbery, and if so, the general character of such persons; whether the landholders and farmers or their local agents took any and what measures immediately after the occurrence for the discovery and apprehension of the offenders; whether the village watchmen were present, and showed a proper degree of attention and alacrity on the occasion, or otherwise; whether there are any persons of notorious bad character in the neighbourhood, or persons who have before been punished for robbery and discharged from jail, and if so, where such persons were at the time of the commission of the offence.(b) Reg. XX. 1817, sect. 15, cl. 2.

(a) Under sect. 2, Reg. II. 1832, such inquiries are not to be made by police officers in cases of burglary and thefts unattended with personal violence except on the requisition of the party injured, or by express order of the magistrate. See para. 2271 *et seq.*

(b) "Although I think recognition of persons at the time of perpetrating a dacoity is very properly looked on with suspicion in the courts, yet I think many circumstantial points are neglected and overlooked. The absence of the parties from their homes at the time of the dacoity, their return with money beyond their usual means, their association with known bad characters, their real means of livelihood, are points which are too much overlooked, and which, if properly attended to, would go much to corroborate other proof. Most of the dacoits are known to the villagers and local police; the former will not take any part against them, partly to save trouble and partly from fear, so long as they keep their depredations to distant villages; the latter generally are paid for their silence; and the magistrate finds it most difficult to struggle against these obstacles."—"It is difficult to procure conviction on a charge of intent to commit dacoity; something of course can be gathered from the arming and assemblage of the people, but the intent is in general to be ascertained only through the means of spies and informers. The evidence of such persons is received with great jealousy in the courts, and they usually have some portion of their own conduct to conceal or extenuate; and their characters will not generally stand the test of a cross-examination; and thus the charge falls to the ground. It would perhaps be more advisable in doubtful cases to investigate the characters of the parties engaged." *Remarks of the superintendent of police in police report for 1845, paras. 848 and 881.*

2322. The foregoing inquiries are to be made and committed to writing on the spot in the form of a sooruthal or report, and in the presence of three or more creditable inhabitants of the neighbourhood, by whom it is to be attested, and the papers are to be forwarded without delay for the information of the magistrate. Reg. XX. 1817, sect. 15, cl. 3.

Such inquiries to be written in the form of a sooruthal and forwarded to the magistrate immediately ;

2323. The sooruthal is to be sent to the magistrate, in place of a report, the moment it is drawn out. C. O. No. 138 of vol. 3, para. 3, rule 2, *L. P.* and No. 28 of vol. 4. *W. P.*

in place of a report.

2324. It is further the duty of the police officers on occasions of the description above-mentioned, as well as in cases of murder and unnatural death, to apprise the persons present at the inquiry, that their suppression or denial of any knowledge, which they possess relative to the perpetrators of the crime, will tend to invalidate their testimony in the event of their deposing to such knowledge at a future period. They are at the same time to give encouragement to all persons, not accomplices or accessaries, who have been present at the commission of a crime, to make a full communication of every fact and circumstance within their knowledge respecting the offenders ; and they are to take their information or evidence, with such precautions of secrecy as are deemed requisite, where persons supposed to have recognized any of the offenders appear to be deterred from publicly naming them, under fear of the consequences if the parties should not be apprehended. Reg. XX. 1817, sect. 15, cl. 4.

Police officers to caution persons present against suppressing evidence in the first instance.

Persons present at the commission of the offence to be encouraged to give evidence.

2325. The darogahs are invariably to report to the magistrate every instance of burglary and theft, which is brought to their knowledge or otherwise, as well as of the attempts in which the offenders have not succeeded in carrying off property. Reg. XX. 1817, sect. 15, cl. 5.

Every case of burglary, and theft, to be reported.

2326. In cases of burglary, the police officer conducting the enquiry is to attend to the foregoing instructions regarding inquiries in cases of robbery, as far as they are applicable, and is to be careful to ascertain and report the time of the day or night at which the offence was perpetrated, and the means used in effecting an entry into the habitation ; and, if by breaking or cutting through a wall, mat, or other partition, the length and breadth of the aperture ; also whether the house or apartment into which a burglarious entry has been effected is used as a place of residence, or for the custody and preservation of property. Reg. XX. 1817, sect. 15, cl. 6.

Accuracy to be observed in recording the date of the offence, and describing the circumstances.

2327. Police officers making inquiries in cases of robbery, burglary, and theft, are to require the village chokeedars, the landholders and their agents, and the inhabitants of the place where the offence was committed, to state whether they suspect any and what persons of having committed the offence ; and, if so, the grounds of their suspicion ; after which they are to take the necessary measures to ascertain how far such suspicions are well founded, and where the persons suspected have been at the time the crime was perpetrated. Reg. XX. 1817, sect. 15, cl. 7.

Information to be required from the chokeedars, zumeendars and others.

SECTION IX.

OF CONFESSIONS, AND TREATMENT OF PRISONERS.

Examinations of prisoners to be taken without oath in the presence of witnesses.

Rules in cases of voluntary confession.

2328. Whenever any person is apprehended and brought before a darogah or other police officer under the provisions of this regulation, the examination of the prisoner is to be taken without oath in the presence of three or more credible witnesses, who are to attest the examination; and the police officer presiding at the enquiry is to question the prisoner fully regarding the whole of the circumstances of the case; the persons concerned in the commission of the crime; and, if any property has been stolen or plundered, the persons in possession of such property, or the place where it has been deposited. In the event of the prisoner's making free and voluntary confession, it is to be immediately written down, if practicable, in the language best understood by the person confessing, and in the presence of three or more credible witnesses, who can sign their names, and are not officers of police or connected with the thana establishment: if no persons can be found who are able to read or write, the most respectable persons in the village are to be required to bear witness, and to affix their mark in attestation of the writing. The party confessing, as well as the witnesses, are to be allowed to read the same when finished; or, if unable to read, the police officer recording the confession is invariably to read it over in the presence of the party and witnesses before it is signed and attested; and is to state at the foot of the paper the day of the week, date, hour, and place at which it is taken; the original confession bearing the signatures of the party and witnesses, is invariably to be transmitted to the magistrate, and not a copy; and the police officer presiding at the inquiry, as well as the person by whom the confession is taken down in writing, are to subscribe their signatures to the paper in attestation of its authenticity. Reg. XX. 1817, sect, 19, cl. 1.

Confessions how to be certified.

2329. Police officers are to certify confessions made before them in the same manner as magistrates, viz.—“I hereby certify that this confession of ——— was made by the said ——— and taken down in writing, and attested by the subscribing witnesses, before me and in my presence, on the ——— between the hours of ——— and ———; that, to the best of my belief, the confession was voluntary, and that no interference, directly or indirectly, on the part of any person likely to influence or intimidate the prisoner, was permitted.” C. O. No. 54 of vol. 2, para. 21.

Language in which confessions are to be written.

2330. Implicit obedience is required to the above rule, that confessions are to be written down in the language best understood by the persons confessing. C. O. No. 242 of vol. 1.

What persons are to be required to witness confessions.

2331. Confessions of prisoners are to be taken at length. No persons employed about the thanas as chokeedars, dosadhs, or chumars, or other such descriptions, are to be made subscribing witnesses by the police, under penalty of forfeiture of situation. These must always be respectable men of the place; and such, if possible, as can read and write; and they should be required to question the prisoner themselves, whether he has confessed voluntarily to the facts stated. C. O. No. 138 of vol. 3, para. 3, rule 3; L. P. and No. 28 of vol. 4. W. P.

2332. If respectable persons, who can read and write, are not procurable, the darogah should record the fact. Reports *L. P.* 1855, part 2, page 540.

If respectable persons be not procurable.

2333. Police officers ordinarily should not summon the same persons to attest both the mofussil confessions of the prisoners, and the searching of their houses. Opportunities for collusion, or, at all events, for the easy imputation of it, are afforded when one set of witnesses is brought to prove these two material, but different, parts of a case. *N. A. R.* vol. 6, page 323.

The same persons are not to be summoned as witnesses to confession and to search of houses of prisoners.

2334. A darogah is fully justified in summoning respectable persons for the purpose of witnessing confessions, when it is requisite; and in the event of such persons refusing to attend, or to attest a confession taken in their presence, he should submit a report of the case to the magistrate; who, after calling upon the parties for any explanation they may have to offer, is competent to pass such order on the case (within the general limitation of his authority) as appears proper. But the darogahs should be particularly cautious in the exercise of this power; and should avoid as much as possible summoning any persons, whose absence from their houses, with reference to their occupations and other circumstances, might be attended with serious inconvenience. *Const. No.* 101.

How the darogah is to proceed in summoning witnesses; and punishment in cases of refusal.

2335. No compulsion is to be used either towards parties or witnesses, for the purpose of obtaining any information whatsoever; and police officers are strictly enjoined not, on any occasion or under any pretext whatever, to encourage a prisoner apprehended upon a criminal charge to confess the same, or to excite the hopes or fears of a prisoner by holding forth prospect of pardon, using threats, or otherwise persuading and intimidating the prisoner, with the view of inducing him to confess. Any species of maltreatment inflicted on a prisoner or witness by a police officer, landholder, or farmer, or by any other person whatever, whether with a view to extort a confession or to procure information, is to subject the offender to exemplary punishment on conviction before the magistrate or sessions court. *Reg. XX.* 1817, sect. 19, cl. 2.

Compulsion, or holding out hopes or fears, to induce confessions is strictly prohibited on pain of exemplary punishment.

2336. Whenever a confession is taken at night, or at any other place than the police thana, the special reason for its having been so taken is to be stated in the darogah's report. *Reg. XX.* 1817, sect. 19, cl. 3.

Confessions taken at night, or in any other place than the thana.

2337. The foregoing provisions are not meant to preclude the darogah, or officer presiding at the inquiry, from making any private verbal examination which he deems requisite with the view of ascertaining accomplices, or discovering stolen property, or obtaining means of proof. *Reg. XX.* 1817, sect. 19, cl. 4.

Darogah may make private verbal examination;

2338. No regulation prohibits police officers from taking down in writing a second examination of a prisoner; and they would not be justified in refusing to record any declaration or confession, which the prisoner wishes to make. *Const. No.* 733.

and may take down in writing second examination.

2339. Prisoners confessing offences are to be kept apart from all persons in custody at the thana; and, if practicable, are to be forwarded to the magistrate's court under charge of a separate guard. *Reg. XX.* 1817, sect. 19, cl. 5.

Prisoners confessing to be kept separate.

2340. Witnesses to confessions are invariably to be bound over by the darogahs to attend the magistrate on the arrival and examination of the prisoners at the sudder station

Witnesses to be bound over to attend.

and the police officers are to be careful not to admit of any deviation from this rule. Reg. XX. 1817, sect. 19, cl. 6.

Prisoners how to be confined.

2341. Prisoners during their detention at the thana are to be confined within the thana house or guard room, or in some other convenient place of confinement, where they are not exposed to the open air. Reg. XX. 1817, sect. 19, cl. 7.

Stocks may be used for prisoners of dangerous character in the night only ;

2342. Stocks may be used at the thanas during the night for the purpose of securing the persons of robbers and murderers, or other persons of dangerous character, or disorderly behaviour, or persons who have escaped from custody, until they can be forwarded to the magistrate; but the darogahs are strictly enjoined under pain of dismissal from office, not to place any individual in the stocks, except during the night time, and then only in cases of robbery and murder, or of previous escape from custody, or when the notoriety of the prisoner's character or his behaviour is such as to render this mode of confinement essential for his safe-guard. Reg. XX. 1817, sect. 19, cl. 8.

but in the H. P. only when there is no hawalat.

2343. In thanas which are provided with a hawalat upon the prescribed plan, the use of stocks is interdicted ; and in thanas, in which no other means of securing prisoners at night exist, the use of stocks is permitted only pending the construction of a proper hawalat. All magistrates are, at the same time, required to use the utmost vigilance to prevent the restraint in stocks of others than the class of persons who are indicated in cl. 8, sect. 19, Reg. XX. 1817 ; and are to instruct the thanadars to furnish a special report of all prisoners subjected to this restraint by them under the authority of the above law. Monthly vernacular summaries of these reports will be submitted by magistrates for the inspection of the commissioner. Govt. Order, *W. P.* No. 3770A, December 15, 1855.

If a woman is detained at the thana by night, a special report is required.

2344. The detention of women at the thana during the night can be necessary only under some unusual circumstances. A special report of the causes of any such detention, and of the arrangements made for the purpose, is, in every case of the kind, to be made by the thanadar to the magistrate. Govt. Order, *W. P.* No. 3770A, December 15, 1855.

Prisoners may be forwarded in light handcuffs.

2345. The darogahs of police are further competent^(a) to use handcuffs of a light construction, to be provided by the magistrate, (instead of fetters and ropes for the legs and arms) for the purpose of forwarding heinous criminals with safety to the magistrate's court. Reg. XX. 1817, sect. 19, cl. 9.

Darogahs strictly accountable for ill-treatment.

2346. The darogahs are to be held strictly accountable for any ill-treatment which prisoners sustain whilst under their charge, and for any severity further than what is essentially requisite for securing the persons of such prisoners. Reg. XX. 1817, sect. 19, cl. 10.

If police officer be convicted of torture.

2347. The chief resident police officer of any police station at which torture is proved to have occurred, is to be liable to dismissal. C. O. Govt. *Bengal*, No. 31, Dec. 17, 1855. Whenever a police officer is convicted of torture, a report of the case in the vernacular is to be sent to every magistrate in the division for general communication to the police of

(a) In the Persian translation this word was originally rendered "*lazim khahud bood*," which made it incumbent on the police officers to use handcuffs ; and it was accordingly altered to "*ikhhtiarce darogah ast*." C. O. Nos. 28 and 41 of vol. 2.

their districts; and a copy is also to be sent to each of the other commissioners of circuit, for similar dissemination throughout their divisions. C. O. Govt. *Bengal*, No. 32, January 8, 1856.

2348. Burkundazes escorting prisoners are, on ordinary occasions, to journey at a rate of not less than six, or more than eight coss per diem. Reg. XX. 1817, sect. 19, cl. 11.

Rate at which prisoners are to travel.

2349. When alighting at any village for the night, the police officers having charge of prisoners are to report their arrival to the proprietor, farmer, or head man of the village, who is to point out a proper place for securing the prisoners during the night, and to require the village watchmen to afford their aid in guarding them. Reg. XX. 1817, sect. 19, cl. 12.

How prisoners are to be secured at night while travelling.

2350. In cases in which prisoners are unable to support themselves during their journey from the thana to the magistrate's court, the darogah is to advance such amount for diet allowance, as is necessary for their way-charges, not exceeding the rate of one anna per diem, reporting the same for the information and orders of the magistrate. Reg. XX. 1817, sect. 19, cl. 13.

Diet money may be allowed to prisoners.

2351. On the arrival of the prisoners at the sudder station, the burkundazes charged with the despatch are to convey them to the foudjaree nazir, or to such other native officer as the magistrate appoints, in order that they may be secured in a lock-up house, until a report of the case can be perused by the magistrate; till which time one or more of the burkundazes, who have accompanied the prisoners, are to remain in attendance to be examined, if necessary, on any points relating to the case. Reg. XX. 1817, sect. 19, cl. 14.

Prisoners to be delivered by burkundazes to the nazir.

2352. Prisoners, who are sent from the station of one district to that of another, or who are sent by a magistrate into the mofussil, for the purpose of being discharged, are to be sent, exclusive of other papers, with a written despatch unsealed, showing the name of the prisoner and his destination; and it is the duty of the darogahs to forward prisoners of this description according to the despatch which accompanies them under charge of the police burkundazes from thana to thana. A statement of all such cases, specifying the names of the prisoners and other particulars, is to be recorded in the thana diary. Reg. XX. 1817, sect. 19, cl. 15.

Rules for the transfer of prisoners from one station to another.

2353. The darogah and other officers of police are prohibited, under penalty of immediate dismissal from office, from detaining any prisoners without sending them to the magistrate, beyond such time as is indispensably requisite for the inquiries directed by this or any other regulation; and if from any cause the inquiry cannot be completed within 48 hours after the arrival of a prisoner at a cutcherry or station of the police officer, he is notwithstanding to be sent to the magistrate with a report of the case and a chalan drawn up according to the form No. 2 (No. 12 of appendix C), a copy of which is to be given to the burkundaz, under whose charge the prisoner is forwarded, to be delivered to the nazir on his arrival at the sudder station. Reg. XX. 1817, sect. 19, cl. 16.

No prisoner is to be detained at the thana more than 48 hours.

2354. "I would wish most particularly to call the attention of the magistrates to the necessity of preventing any police darogahs unnecessarily delaying the transmission of

Strict attention to be paid to the above rule.

any arrested person to the sudder station. I have, in numerous cases brought before me almost invariably found either extortion of money, procuring compulsory confessions, or abuse of the person of the prisoner if a female, or other malpractices, to have been the object in such illegal detention; which, besides being open to these objections, places in the hands of the darogahs the power of imposing duress of a very severe nature on parties brought before them, who may refuse to comply with their demands. No instance of detention beyond the period laid down by cl. 16, sect. 19, Reg. XX. 1817, should be allowed to pass unnoticed, and the darogah or other police officer should be made strictly accountable for any breach of the rules in this point." *Extract from police report L. P. for the first 6 months of 1841, para. 707.*

Magistrate may not authorize further detention.

2355. No discretion is now vested in the magistrate to authorize the detention at the thana of a party accused of a criminal offence, cognizable by the police, beyond the period specified above. C. O. No. 22, Nov. 12, 1855, *L. P.*; and No. 1394, October 9, 1855. *W. P.*

All apprehensions to be reported; and no person to be discharged except on bail.

2356. The officers of police are to report to the magistrate the cases of all persons apprehended within their respective jurisdictions, whether such persons have been admitted to bail or otherwise; and no person who is once apprehended is to be discharged except on bail, or under the special orders of the magistrate. Reg. XX. 1817, sect. 19, cl. 17.

Special attention to be paid to this rule.

2357. The superintendent of police requires especial attention to be paid to this rule, as the infraction of it is one of the chief means by which the police are enabled to extort money. C. O. Sup. Pol. *L. P.* No. 35 of 1838.

SECTION X.

MISCELLANEOUS RULES.

All circumstances dangerous to the public peace to be reported.

2358. The darogahs of police are uniformly to report to the magistrates, whenever any individuals, within their respective jurisdictions, entertain in their service any extraordinary number of armed men, or commence building or repairing any fort or gurhee, or collecting together any quantity of arms, ammunition, or military stores. Reg. XX. 1817, sect. 30, cl. 1.

Encroachments on public roads to be prevented and reported.

2359. The darogahs are to prevent all encroachments on the public roads, and are at the same time to report the circumstances of each case for the information of the magistrate, and to record an abstract of the same in the thanadaree proceedings. Reg. XX. 1817, sect. 30, cl. 5.

Treatment of insane persons.

2360. The darogahs are to secure, and send to the sudder station of the district, all insane persons found within the limits of their respective jurisdictions, from whose insanity there is reason to apprehend any fatal or serious consequences, unless the friends of such persons agree to enter into engagements to adopt such precautions as shall prevent their doing mischief. In such case the police officer, to whom the engagements are tendered, is to refrain from securing the person of the insane individual, and to await the

instructions of the magistrate, to whom the circumstances of the case are to be reported without delay. Reg. XX. 1817, sect. 30, cl. 6.

2361. The officers of police are enjoined to show every mark of personal respect and attention to judges on circuit, during their progress from station to station. Reg. XX. 1817, sect. 31, cl. 1. Judges on circuit to be treated with respect.

2362. On the arrival of any European, not in Her Majesty's or the Honorable Company's civil or military service, who proposes to settle within the limits of any thana jurisdiction, the darogah is to report the circumstance for the information of the magistrate. Reg. XX. 1817, sect. 31, cl. 2. Arrival of Europeans to be reported.

2363. The police darogahs are, towards the close of each English year, to cause the form of statement, in English and the vernacular, No. 21 (No. 15 of appendix C) to be exhibited to all Europeans, not in Her Majesty's or the Honorable Company's civil or military service, residing within their respective jurisdictions; and are to require such Europeans to furnish for the information of the magistrate separate statements filled up according to the prescribed form either in English or the vernacular. These statements are to be forwarded by the police darogahs to the magistrate on or before the 5th of January in each year. Reg. XX. 1817, sect. 31, cls. 3 and 4. These statements are no longer required. Annual statement to be filled up by Europeans;

2364. The darogahs of police are enjoined to afford assistance, on application from the revenue officers, for the safe custody and conveyance of despatches of treasure; and to allow such despatches to be deposited during the night, for better security, within the house allotted for the thana. Reg. XX. 1817, sect. 32, cl. 1. and forwarded by darogahs to magistrate.

2365. The darogahs are likewise, as far as their other duties admit, to afford protection to despatches of treasure belonging to bankers and merchants, on application from the person in charge of the same. Reg. XX. 1817, sect. 32, cl. 2. Assistance to be given in guarding despatches of treasure by revenue officers;

2366. Police darogahs are not required to perform the duties prescribed by sect. 22, Reg. I. 1812 to prevent an evasion of the customs duties, *i. e.* endorsing the rowannahs of salt, &c. Const. No. 317. and by individuals.

2367. If the people of the village object or refuse to sign their names in attestation of the service of the notices, which zumeendars are required to serve in the case of putneetenures advertised for sale, and if there be no moonsiff, the peon serving the notices is required to go to the nearest thana, and there make voluntary oath of the same having been duly published; a certificate to which effect is to be signed and sealed by the police officers, and delivered to the peon. Reg. VIII. 1819, sect. 8, cl. 2. In other cases, as in sales of certain estates for the recovery of arrears of revenue under sects. 5 and 20, Act I. 1845, the law requires that proclamations should be stuck up in the thanas. It seems unnecessary to quote each provision, for, as a general rule, the darogah should affix in some conspicuous place in the verandah of his cutcherry-house any proclamation which is sent to him by an authority in any department of the public service. Not required to endorse salt rowannahs.

2368. The thanadars, police darogahs, chaprasis, &c., have no authority to call on native officers and soldiers on furlough for their leave of absence certificates, except under Peon serving notices of putneetenures advertised for sale may swear to the fact of service before police officers.

Police officers should affix in a public place all proclamations sent to them by the authorities.

Not to require certificate of leave of absence from sepoys on furlough.

Apprehension of deserters.

the immediate instruction of the magistrate. Commanding officers of regiments may apply for the aid of the civil authorities for the apprehension of deserters; and subordinate police officers, when duly authorized by the magistrate, are warranted in detaining persons suspected of desertion. C. O. No. 18 of vol. 2.

to inculcate upon landholders and managers of lands their duties in giving information of crimes, apprehending offenders, and maintaining the peace.

2369. The police darogahs are to take every favorable opportunity, when employed on local inquiries, as well as on other occasions, of explaining to the zumeendars, talookdars, and other proprietors of land malgoozaree or lakhiraj; to the sudger farmers and under-renters of land, dependant talookdars, naibs, and other local agents; and to all native officers employed in the collection of the revenue and rents of land on the part of government or the court of wards; the duties incumbent on them, and the responsibility attached to them, to communicate to the magistrate and police darogahs, either publicly or secretly, all information which they obtain respecting the commission of murder, robbery, housebreaking, arson, or theft, within the limits of the estate or farm held or managed by them respectively; or respecting the resort of any known robbers of whatever description, or the residence of any notorious receiver or vender of stolen property within such limits; as well as to afford their assistance in the apprehension of all persons, for whose apprehension warrants have been issued by the magistrate; and generally to co-operate with, assist, and support the police officers of government in maintaining the peace, preventing as far as possible affrays and other criminal acts of violence, or apprehending the offenders under the rules and restrictions enacted and promulgated in the regulations. Reg. XX. 1817, sect. 33, cl. 1.

Darogah to be furnished with copies of regulations regarding the duties of such persons.

2370. To enable the police darogahs the more effectually and satisfactorily to perform the service thus required from them, the magistrates are to be careful to furnish them with copies of, or extracts from, all regulations in force on the points above adverted to, or any other immediately connected with the aid to be given by landholders, farmers, under-tenants, and managers of land, in support of an efficient police. Reg. XX. 1817, sect. 33, cl. 2.

SECTION XI.

OF PERSONS WEARING MILITARY DRESS, OR BADGES.

No person is allowed to dress his servants in the uniform of sepoys.

2371. All persons, whether European or native, within the Company's provinces (excepting such privileged persons as the government specially exempts from the operation of the rule contained in this section) are positively forbidden to dress any of their servants, either for the purpose of parade or of business, in the uniform of the Company's sepoys or lascars, or in a dress so nearly approaching to that uniform as to enable the persons wearing it to impose themselves on the country people for sepoys and lascars. Reg. XI. 1806, sect. 9, cl. 2.

2372. All natives, excepting those actually in the military service of the Company, or belonging to persons specially exempted by government from the operation of this rule, are forbidden to wear a dress similar to that mentioned in the foregoing clause. Reg. XI. 1806, sect. 9, cl. 3.

No person is allowed to wear such dress.

2373. Officers of every description employed in the service of the Company, who are allowed establishments of burkundazes, peons, and paiks, in their official capacity, or who have occasion to employ persons of any of those descriptions in such capacity, are prohibited from clothing them with a military dress. Reg. XI. 1806, sect. 9, cl. 4.

Civil officers are not to clothe their public servants in such dress.

2374. Native officers and sepoy, excepting subadars, jemadars, and serangs, even though in the service of the company, who temporarily reside or have occasion to travel in the interior parts of the country, unless employed on the public service, are forbidden to wear their uniform coats. Reg. XI. 1806, sect. 9, cl. 5.

Sepoys are not to wear their uniform while absent from their corps, unless on public service.

2375. With a view of giving full effect to the orders contained in the preceding clauses, the military commanding officers of stations, and of detachments, in the interior parts of the country, and the magistrates, are authorized and required to deprive of a military dress any person who wears it contrary to these orders; unless it appears that such person is in the military service of the Company, in which case he is to be sent to the corps to which he belongs with a written complaint against him. The local officers of police are also empowered and directed to apprehend all persons of the above description, and to send them to the magistrate, who is to deal with them in the manner above prescribed. Reg. XI. 1806, sect. 9, cl. 6.

Persons disobeying these orders how to be treated.

2376. In pursuance of the above rules, the darogahs of police are required to apprehend and send to the magistrate all persons not actually in the Honorable Company's military service, or belonging to persons specially exempted by government from the operation of the above rules, who are found dressed in the uniform of the Company's sepoy or lascars, or in a dress so nearly approaching to that uniform as to enable the persons wearing it to impose themselves on the country people for sepoy or lascars. Reg. XX. 1817, sect. 30, cl. 2.

Police officers are to apprehend persons wearing military dress;

2377. The local officers of police are empowered and directed to apprehend all native officers and sepoy, excepting subadars, jemadars, and serangs, wearing their uniform coats when not employed on the public service, and to send them to the magistrate. Reg. XX. 1817, sect. 30, cl. 3.

or sepoy wearing their uniform while on leave of absence.

2378. A general order of a magistrate forbidding people to carry arms is illegal: and individuals should not be deprived of their weapons except in cases where there is reasonable ground to apprehend danger of a breach of the peace from their being carried about. N. A. R. vol. 3, page 196.

Magistrate cannot forbid the wearing of arms, unless there is fear of a breach of the peace.

2379. No person is to wear, or to be accessory to the wearing by any other person of any chuprass or badge intended to resemble any chuprass or badge worn by servants of the government; and every person violating this rule is to be punishable by fine and imprisonment, on conviction before a magistrate as for a misdemeanor. Act XVIII. 1835, sect. 2.

Punishment of persons wearing badges resembling government badges.

Punishment of private persons wearing badges, which do not bear the name of the employer.

2380. Every chuprass or badge worn by any person, not being a servant of the government, is to bear the name of the party by whom the wearer is employed; and whoever wears a chuprass or badge, or is accessory to the wearing of such chuprass or badge, otherwise than in conformity to this rule, is to be punishable by fine and imprisonment, on conviction before a magistrate, as for a misdemeanor. Act XVIII. 1835, sect. 3.

SECTION XII.

OF PROHIBITED BOATS.

Darogahs are to seize prohibited boats.

Description of prohibited boats.

2381. The darogahs are to seize all boats built, used, or transferred, in opposition to the rules contained in this section, and to apprehend and send to the magistrate the artificers employed in repairing or building such boats, and to report to him the name of the proprietor of the village in which they have been built or repaired. All persons are prohibited building or making use of boats of the following denominations and dimensions, or of boats of any other denominations being of the same dimensions, without previously obtaining from the magistrate the written authority hereafter directed :

	In length covids.	In breadth covids.
Luckhas,.....	40 to 90	2½ to 4
Jelkas,.....	30 to 70	3½ to 5
Paunsways of Chandpore carrying more than thirty oars.		

Beng. Reg. XXII. 1793, sect. 20, cl. 1.

Magistrates are to seize and confiscate such boats.

2382. The magistrates are to seize and confiscate all boats of the foregoing descriptions, which are built, used, or transferred within the limits of their respective jurisdictions without written authority from them for that purpose. *Beng. Reg. XXII. 1793, sect. 20, cl. 2.*

Villages in which such boats are built or repaired to be forfeited to government.

2383. Any zumeendar or other landholder allowing any boat of either of the descriptions above specified to be built or repaired within the limits of his zumeendaree, unless a writing is produced to him under the seal and signature of the magistrate, authorizing the building or using of such boats, is to forfeit to government the village in which such boat is proved to have been so built or repaired. *Beng. Reg. XXII. 1793, sect. 20, cl. 3.*

Punishment of artificers employed in building or repairing such boats.

2384. All carpenters, blacksmiths, or other artificers, are prohibited engaging for or being employed in the building or repairing of boats of such descriptions (unless the person offering to employ them produces a writing under the seal and signature of the magistrate authorizing the building or using of such boat) under pain of imprisonment for any period not longer than one month, or suffering corporal punishment not exceeding 20 stripes. The magistrates are empowered to cause artificers, who are proved to have offended against

this prohibition, to be punished in the manner and under the limitations directed according to the circumstances of the case. *Beng. Reg. XXII. 1793, sect. 20, cl. 4.*

2385. The magistrates are empowered to authorize any person to build or use boats of the dimensions or descriptions above prohibited, for the purposes of trade, or of conveying themselves from place to place by water, or for recreation; but such authority is to be given in writing under his official seal and signature, and is constantly to remain with the person to whom the building of the boat is committed whilst the boat is building, or on board of the boat in charge of some person after it is built; otherwise the boat is to be liable to seizure and confiscation notwithstanding such writing, in the same manner as if the boat had been built and used without such authority. The magistrates are to be careful not to grant licenses to build or use boats of the above denominations or dimensions, excepting to persons who they are satisfied will not allow them to be employed for any improper purposes. All persons desirous of building or using boats of the prohibited dimensions and descriptions, or to sell or transfer them, are to apply to the magistrate for a written authority for that purpose. The magistrates are to cause this section to be subjoined to all the written authorities which they grant for the building or using the boats in question, and the sanction for the sale or transfer of such boats is to be endorsed on the original authority for building or using them. *Beng. Reg. XXII. 1793, sect. 20, cl. 5.*

Magistrates may grant licenses for building such boats, under certain restrictions; and this section is to be appended to such licenses.

SECTION XIII.

OF TREASURE TROVE.

2386. Whenever any hidden treasure, consisting of gold or silver coin, or bullion, or of precious stones, or other valuable property may be found buried in the earth, or otherwise concealed within any part of the territory subject to this presidency; and, after due notification, the owner thereof may not be discoverable; such hidden treasure shall become the property of the person or persons who may have found the same, provided it shall not exceed in amount or value, the sum of one lakh of sicca rupees; and provided the finder or finders shall have conformed to the rules prescribed in this regulation. *Reg. V. 1817, sect. 2.*

Hidden treasure under what circumstances and conditions to become the property of the finder.

2387. Whenever any person may find hidden treasure, of the description stated in the foregoing section, he shall give immediate notice thereof to the judge of the zillah or city in which the treasure may have been found; and shall at the time deposit the treasure in the zillah or city court, with an exact inventory thereof. *Reg. V. 1817, sect. 3.*

The finder how to proceed on the discovery of hidden treasure.

2388. The zillah or city judge receiving a deposit as above directed, shall return a receipt for the treasure deposited, after causing the same to be carefully compared with the inventory; and shall issue a public notification in the current languages of the country, to be published and affixed in his own cutcherry, and in the cutcherry of the collector of the district, requiring all persons who may have any claim of right to the treasure in deposit, to attend in person, or by vakeel, and prove their title thereto, within six months from the date of the notice. *Reg. V. 1817, sect. 4.*

Duty of the judges in such cases.

Notification to be issued, and period allowed to claimants to bring forward their claim.

Collectors to bring forward any claim of right which government may appear to possess to such treasure.

Summary inquiry to be instituted by the judges of zillah and city courts.

How judgment to be awarded by the judge.

What judgment to be passed by the judge, in cases in which no claim shall be preferred either by government or by individuals, and the amount may not exceed one lakh of sicca rupees.

Decision to be passed by the judge in cases in which the amount of treasure shall exceed one lakh of sicca rupees, and no claim of right thereto be established.

Persons discovering hidden treasure who shall neglect to give due notice within one month, shall be considered to have forfeited all right and title to the treasure and compensation.

Concealment of treasure not punishable by magistrate.

2389. It is the duty of the collectors to bring forward and to support, in conformity with the foregoing provision, any claim of right which government may appear to possess to such treasure. In the event of any claim of right being preferred either on the part of individuals or of government, pursuant to the prescribed notification, the judge shall institute a summary inquiry into the claim preferred; and if the title of government or other person so claiming the treasure of deposit or any part thereof, be clearly established, he shall adjudge the same accordingly; subject to reimbursement of all expense incurred by the finder of the treasure, as well as to such compensation for the discovery of it as may, in each case, appear just and reasonable. Reg. V. 1817, sect. 5.

2390. If no claim of right be preferred either by government or by an individuals within the period limited by the notification directed in section 4 of this regulation, or if the claim or claims so preferred shall not on a summary inquiry appear to be well founded; and the amount or value of the hidden treasure found at the same time, or in the same place, shall not exceed one lakh of sicca rupees; the zillah or city judge shall adjudge the same to the person or persons who may have discovered the treasure, and deposited it in the zillah or city court, as required by section 2; subject only to the actual expense which may have been incurred in adopting the measures prescribed by this regulation. Reg. V. 1817, sect. 6.

2391. If the amount or value of any hidden treasure found at the same time, or in the same place, shall exceed one lakh of sicca rupees, and no claim of right thereto be established, judgment shall be given, according to the preceding section, in favor of the person or persons who may have discovered and deposited the treasure, to the amount of one lakh of sicca rupees; and the excess above that sum shall be declared at the disposal of government. Reg. V. 1817, sect. 7.

2392. If any person discovering hidden treasure of the description specified in section 2 of this regulation, shall not, within one month after finding the same, give notice to the judge of the zillah or city court, in conformity with section 4, and make the deposit thereby required, he shall be considered to have forfeited all right and title to the treasure; as well as all claim to a reimbursement of expense, compensation, or reward, under the provisions of this regulation; and the treasure so clandestinely withheld from public investigation shall, on a summary suit by any subsequent claimant of right, and proof of a just title thereto, be adjudged to the legal owner with interest and costs; or if no private claim be established, shall, on the application of the vakeel of government, be liable to confiscation to government. Reg. V. 1817, sect. 8.

2393. The concealment of hidden treasure is not a criminal offence punishable by a magistrate. It involves only the forfeiture abovementioned, which is to be awarded by the civil courts. Reports *W. P.* 1852, page 521.

CHAPTER IV.

OF LANDHOLDERS.

SECTION I.

OF THEIR RESPONSIBILITY.

2394. Landholders and farmers of land are not responsible for robberies committed in their respective estates or farms, unless it is proved that they connived at the robbery; received any part of the property stolen or plundered; harboured the offenders; aided, or refused to give effectual assistance to prevent their escape; or omitted to afford every assistance in their power to the officers of government for their apprehension; in either of which cases they are subject to be prosecuted personally for the crime or offence before the sessions court, and if convicted their lands and effects are liable to be sold at the discretion of government to make good the value of the property stolen or plundered to the owner. *Beng. Reg. XXII. 1732, sect. 3.*

2395. The landholders and village farmers are bound to, and responsible for, the preservation of the peace within the limits of their respective estates and farms. *Ben. Reg. XVII. 1795, sect. 2. Ced. Prov. Reg. XXXV. 1803, sect. 2. Western Prov. Reg. XIV. 1807, sect. 4.*

2396. The engagements entered into by the village zumeendars and farmers [in Benares] bound them to be responsible, subordinately to the aumil^(a), for the maintenance of the peace, and for apprehending all disturbers thereof in and throughout their respective estates and farms; not to harbour thieves or robbers, but to secure their persons and deliver them up for trial; as well as to recover, or in failure thereof to be answerable for and to make good the value of, all property robbed or stolen within their respective limits;—and to send in for trial, accompanied by an attested report of the circumstances of the case, all parties concerned in broils, affrays, murders, or other breaches of the peace. *Ben. Reg. II. 1795, sect. 14, cls. 8 and 9.*

2397. Landholders and farmers of land are considered responsible for robberies or thefts committed in their respective limits, estates, or farms; it being understood,^(b)

Lower Provinces.

Landholders are not responsible for robberies, except in cases of neglect or connivance.

Western Provinces.

Police subject to landholders, who are responsible for the preservation of the peace.

Police duties for which the village zumeendars and farmers in Benares bound themselves to be responsible.

How far landholders are responsible for thefts and robberies.

(a) The talsildaree (or aumildaree) system of police established by the above and other regulations in Benares, and the ceded and conquered provinces, was declared to have been found inefficient for the purposes intended by it, and was consequently repealed by Reg. XIV. 1807; and all mention of the talseeldars, their duties and responsibilities, has accordingly been struck out of the provisions quoted in succeeding paragraphs.

(b) The preamble to Reg. XVII. 1795, thus explains the causes of this provision;—"But the parties, thus made responsible, having represented that robberies and thefts committed on beparis and others were often perpetrated in consequence of their stopping and remaining during the night, with their cattle and goods, in the open fields or woods, instead of putting up in the villages, and giving notice of their arrival so as to admit of their security being duly attended to, it was provided by a general notification issued by the resident on the 29th January 1789, that no person should be entitled to restitution or indemnification by the aumils, landholders, or farmers, for losses by theft or robbery committed at night in the

however, that for night robberies in the open roads or woods, the landholders, or farmers are not to be held responsible, unless it is proved that they had such knowledge of the circumstances, as might reasonably have been expected to enable them to have prevented the theft or robbery; but that for thefts or robberies in inhabited places they are to be considered as liable to be made responsible, whether notice of the arrival of the owners of the property has been given to them or not, if under the circumstances of the case the magistrate be of opinion, that the theft or robbery was committed with their connivance, or that the perpetration of it was ascribable to their want of care or vigilance. *Ben. Reg.* XVII. 1795, sect. 3. *Ced. Prov. Reg.* XXXV. 1803, sect. 3, cl. 1. These rules are declared to be still in force throughout *Ben. and Ced. and Cong. Prov.* by *Reg.* XIV. 1807, sect. 19, cl. 1.

and for the value of stolen property brought into their estates.

2398. The landholders and farmers are further responsible for the value of any stolen or plundered property, proved to have been brought into their estates or farms with their knowledge or connivance, and which they have not caused to be delivered up, or respecting which they have not given timely information to the local police officer or to the magistrate. *Ben. and Ced. and Cong. Prov. Reg.* XIV. 1807, sect. 19, cl. 2.

Claims for the value of stolen property to be tried in the civil court.

2399. All claims upon the landholders and farmers for the value of stolen or plundered property, under the above rules, are to be instituted, tried, and decided in the civil courts, subject to the general rules of appeal. *Ben. and Ced. and Cong. Prov. Reg.* VIII. 1797, sect. 2; and *Reg.* XIV. 1807, sect. 19, cl. 3.

Landholders required to prevent affrays, and other breaches of the peace, and to apprehend persons committing such.

2400. The landholders and farmers of land, who by the above provisions are entrusted with the police of their respective estates and farms, are required, with the assistance of their paiks, chokeedars, pasbans, and other descriptions of village watchmen, to give at all times their utmost care and vigilance to prevent affrays, assaults, and all other acts of violence and breaches of the peace, within their respective estates and farms; as well as to apprehend, and deliver over to the police officers, any persons who are found in the act of committing a breach of the peace, or whom the village watchmen are required to apprehend by [sect. 21, *Reg.* XX. 1817]. *Ben. Reg.* II. 1797, sect. 2. *Ced. Prov. Reg.* XXXV. 1803, sect. 3, cl. 2.

Landholders guilty of wilful neglect in such cases are liable to forfeiture of land, or fine.

2401. Any landholder or farmer of land, who is convicted of wilful neglect in the instance above referred to, and particularly of neglect to afford his ready and utmost assistance in apprehending persons within his estate or farm who have committed, or are charged with having committed a breach of the peace, is liable to the forfeiture of his estate

open fields or woods, and that restitution or indemnification should be claimable only in cases in which the owners of the property had put up at some town or village, and given notice of their arrival. But it having been subsequently considered, that it was the duty of the *sumils*, and the landholders and farmers, to have information conveyed to them of the arrival of merchants and travellers within their respective limits, and to provide for their security and protection; and it having appeared improbable that travellers and merchants in general would be apprized of the requisition for their giving notice of their arrival at a town or village; it was deemed inconsistent with the principles of justice, that any omission in this respect on their part should be allowed to exempt the *sumils*, landholders, or farmers, from making good any losses they might sustain by theft or robbery. It accordingly became an established principle throughout the province, that for night robberies in the open roads or woods the *tuhseeldars*, landholders, and farmers, were not to be held responsible, unless," &c. as above.

or farm, or to such fine to government as is judged adequate to the circumstances of the case; and is to be proceeded against in the following manner. *Ben. Reg. II. 1797, sect. 3, cl. 1. Ced. Prov. Reg. XXXV. 1803, sect. 3, cl. 3.*

2402. Landholders are liable to fine by the magistrate, in cases of theft of property at night from within their villages, only when they wilfully neglect to apprehend and deliver over to the police officers any person whom the village watchmen are required to apprehend by [sect. 21, Reg. XX. 1817], or when they make any other default of the nature described in the above provision. *Const. No. 422.*

When landholders are liable to fine for theft of property at night.

2403. The charge of wilful neglect, in the instances aforesaid, is to be received and examined into by the magistrate in the mode prescribed by the regulations with respect to other charges of a criminal nature; and after hearing the defence of the party accused, with the evidence adduced by him in his behalf, if the magistrate is of opinion that the charge is not established, he is to pass judgment of acquittal, with damages^(a) to the party if the complaint appears to have been groundless and litigious. If the magistrate considers the charge established, he is to record his opinion to this effect, with the punishment he judges adequate to the case, whether a fine (the amount of which is to be specified), or a forfeiture of the offender's estate or farm (the annual jumma of which is to be in that case specified), and to transmit without delay a copy of his proceedings to the nizamut adawlut. *Ben. Reg. II. 1797, sect. 3, cl. 2. Ced. Prov. Reg. XXXV. 1803, sect. 3, cl. 4.*

How the magistrate is to proceed in such cases.

2404. These provisions may be applied to a case in which no charge has been preferred by a private prosecutor; the magistrate being competent to proceed against the zumeendar for such neglect, whatever may be the means by which he has acquired the information to criminate him. *Const. No. 889.*

Private prosecution is not necessary in such cases.

2405. The nizamut adawlut, on receipt of the magistrate's proceedings, are to pass such order thereupon as they think proper, on due consideration of the evidence and all the circumstances of the case; and in all instances wherein they order a fine to government their judgment is to be considered final, and immediately carried into execution by the magistrate, in the same manner as other fines are levied under the existing regulations. But in case the nizamut adawlut adjudges a forfeiture of the offender's land or lease, they are, previous to ordering such judgment to be carried into execution, to transmit their proceedings with those of the magistrate to government, who are finally to determine whether the judgment of forfeiture is to be put in force, or commuted to a fine, or otherwise; and who, whenever the land or lease of the offender is ordered to be forfeited to government are at the same time to cause the necessary instructions for the future disposal of the land to be conveyed to the collector through the board of revenue. *Ben. Reg. II. 1797, sect. 3, cl. 3. Ced. Prov. Reg. XXXV. 1803, sect. 3, cl. 5.*

How the nizamut adawlut are to proceed on receipt of the magistrate's proceedings in such cases.

2406. The above provisions extend to landholders or farmers of land, who are convicted of having themselves been concerned, directly or indirectly, in any theft or robbery

The same rules are applicable to landholders con-

(a) These damages must mean reimbursement of costs, under the provisions of Reg. XIV. 1797, and Reg. VII. 1803. See paras. 1584 et seq.

niving at, or aiding and abetting in any theft or robbery.

committed within their respective estates or farms, or of having been aiding and abetting therein, or privy to the same. Such landholders and farmers are liable to be proceeded against in the manner prescribed in the foregoing clauses, subject to the penalty prescribed therein. *Ced. and Cong. Prov. Reg. VIII. 1805, sect. 14, cl. 8.*

The same rules are applicable to officers of government employed in the collection of the public revenue.

2407. The above provisions, extended to the conquered provinces and Bundelcund by Reg. IX. 1804, are declared to be still in force, and are also to be considered equally applicable to all officers of government, intrusted with or employed in the collection of the public revenue; or the rents of estates held khas, or under attachments; it being the duty of every public officer to render any assistance in his power for the support of the police and the prevention of crimes, or the apprehension of persons by whom they are committed; especially when called upon to aid the established officers of police. *Ben. and. Ced. and Cong. Prov. Reg. XIV. 1807, sects. 20 and 21.*

SECTION II.

OF INFORMATION REQUIRED FROM LANDHOLDERS AND OTHER PERSONS ; AND OF CONNIVANCE IN OFFENCES.

Information to be given regarding the resort to their estates of dacoits and other robbers,

2408. All zumeendars, talookdars, and other proprietors of land, whether malgoozaree or lakhiraj ; all sudder farmers and under renters of land of every description ; all dependant talookdars ; all naibs and other local agents ; all native officers employed in the collection of the revenues and rents of lands on the part of government, or of the court of wards ; are especially accountable for the early and punctual communication to the magistrates and police darogahs, either publicly or secretly, as the informants judge proper, of all intelligence which they obtain respecting the resort to any place, within the limits of the estate or farm held or managed by them, of any person or persons of the different classes of people ordinarily known by the appellation of dacoits, kozaks, thugs, or budhucks, or of any other description of robbers. *Reg. VI. 1810, sect. 2.*

and penalty for neglect in such cases, with mode of procedure to be adopted by magistrate,

2409. If a magistrate has grounds to believe, that any person of the descriptions above specified has neglected to give due information to the magistrate, or the police darogah, of the resort of any robber to any place within the limits of the estate or farm held or managed by such person, the magistrate is to call upon him to answer to the charge; and if it appears, upon a full and impartial inquiry, that the person accused has been actually guilty of the neglect ascribed to him, the magistrate is to sentence the offender to pay such a fine to government, and to suffer imprisonment for such a period of time, as he deems proportioned to the offence, not exceeding, however, the limitation prescribed by sect. 19, Reg. IX. 1807, viz. that imprisonment for 6 months, and a fine of 200 rupees, commutable, if not paid, to imprisonment for a further period not exceeding 6 months longer.* *Reg. VI. 1810, sect. 3.*

* See note to para. 2421

2410. All zumeendars, talookdars, and other proprietors of lands, whether malgooza-ree or lakhiraj; all sudder farmers and under renters of land of every description; all dependant talookdars; all naibs and other local agents; all native officers employed in the collection of the revenue and rents of land on the part of government, or of the court of wards; are hereby declared accountable for the early communication to the magistrate, either secretly or publicly, of all information which they obtain respecting the residence of any notorious receiver or vender of stolen property within the limits of the estate or farm held or managed by them; and any landholder or other description of persons above noticed, to whom such responsibility is declared to attach, who neglects to give the information hereby required to the police darogah, or to the magistrate, is on proof of such neglect, after a similar inquiry to that directed by the above provision,^(a) to be sentenced by the magistrate to pay a fine, or to suffer imprisonment not exceeding the limitation therein specified. *Beng. Reg. I. 1811, sect. 10; extended to Ced. and Cong. Prov. and to Ben. by sect. 2, Reg. XV. 1812.*

of the residence of any receiver or vender of stolen property within their estates;

and penalty of neglect;

2411. All zumeendars, talookdars, and other proprietors of lands, whether malgooza-ree or lakhiraj; all sudder farmers and under renters of land of every description; all dependant talookdars; all naibs and other local agents; all native officers employed in the collection of the revenue and rents of lands on the part of government, or of the court of wards; are declared especially accountable for the early and punctual communication to the magistrates or police darogahs of all information which they obtain respecting the commission of robberies, and likewise regarding the offence of breaking into houses, tents, or boats, or other place of habitation, perpetrated within the limits of the estate or farm held or managed by them; and any landholder or other description of persons above noticed, to whom such responsibility is declared to attach, who neglects to give the information hereby required to the police darogah, or to the magistrate, is on proof of such neglect, after an enquiry similar to that directed by sect. 3, Reg. VI. 1810,* to be sentenced by the magistrate to pay a fine, or to suffer imprisonment not exceeding the limitation therein specified. *Reg. III. 1812, sect. 4, cl. 2.*

of the commission of robberies perpetrated within their estates,

and penalty of neglect;

* See note to para. 2410.

2412. All zumeendars, talookdars, and other proprietors of land whether malgooza-ree or lakhiraj; all sudder farmers and under renters of land of every description; all dependant talookdars; all naibs, and other local agents; all native officers employed in the collection of the revenue and rents of lands on the part of government, or of the court of wards; are declared especially accountable for the early and punctual communication to the magistrates, or police darogahs, of all information which they obtain respecting the commission of murders, and likewise regarding the offences of arson and theft, perpetrated within the limits of the estate or farm held or managed by them: and any landholder or other description of persons above noticed, to whom such responsibility is declared to attach, who neglects to give the information hereby required to the police darogah or to the magistrate, is on proof of such neglect, after an enquiry similar to that directed by sect. 3, Reg. VI.

of the commission of murders, arson, and thefts, perpetrated within their estates,

and penalty of neglect.

(a) The section specified in the original is sect. 13, Reg. IX. 1808; but, as that regulation has been repealed, and as it is exactly the same, in such respects, as sect. 3, Reg. VI. 1810, I have quoted the latter for the sake of convenience.

* See note to
para. 2410.

1810,* to be sentenced by the magistrate to pay a fine, or to suffer imprisonment not exceeding the limitation therein specified. Reg. VIII. 1814, sect. 2.

2413. A magistrate cannot sentence a person under the above provision to both fine and imprisonment, but only to a fine not exceeding 200 rupees, commutable if not paid to imprisonment not exceeding 6 months. Const. No. 485.

The principal
persons in the vil-
lages are required
to give information
of the resort or
passage of any con-
siderable body of
strangers ;

penalty in cases of
neglect :

* See note to
para. 2410.

2414. The principal persons residing in villages, whether landholders or farmers, or other local managers, or munduls, putwarees, or other heads of villages, and also chokeedars and village guards of every description, are responsible for the early and punctual communication to the officers of the nearest police station of the resort to or passage through their villages of any considerable body of strangers, or of the assemblage of such bodies within the limits of their villages, together with any particulars which they are able to collect as to the alleged object of their assemblage or journey, or any suspicion which arises as to their real character and intentions. Any landholder or farmer or other local manager, or mundul, putwaree, or other heads of villages, who wilfully neglects or delays to give the information above required, is on proof of such neglect, after an enquiry similar to that directed by sect. 3, Reg. VI. 1810,* to be sentenced to pay a fine or to suffer imprisonment not exceeding the limitation therein specified ; and any chokeedar, or other village guard, who is guilty of such neglect, is liable to the punishment which the magistrate is authorized to inflict under the provisions of sect. 6, Reg. III. 1812. [See note to para. 2177.] Reg. III. 1821, sect. 7, cl. 5.

and of all unnatur-
al or suspicious
deaths ;

penalty of neglect.

2415. The principal persons residing in villages, whether landholders or farmers or other local managers, or munduls, putwarees, or other heads of villages, are responsible for the early and punctual communication to the officers of the nearest police station of all unnatural deaths, or deaths attended with suspicious circumstances, which come to their knowledge : and any landholder, farmer, manager, or other principal inhabitant of a village, who is convicted of wilfully neglecting or delaying to furnish the information above required, is liable to be fined by the magistrate in any sum not exceeding 200 rupees, and in default of payment to be confined for any period of imprisonment not exceeding 6 months. Reg. XX. 1817, sect. 14, cl. 1.

It is not suffi-
cient that the infor-
mation is received
from the chokee-
dars.

2416. The zumeendars are obliged to give, under certain prescribed penalties, the required information respecting dacoities, murders, and other crimes committed within the limits of their estates, which come to their knowledge ; and it is not sufficient that the same information is received from the chokeedars. The mode in which the information is to be communicated appears to be left to the discretion of the zumeendars : in general it should be supplied in writing ; but if the zumeendar has any secret information to give, he may wait on the magistrate personally for that purpose ; and it is optional with him to send a servant to the magistrate or to the darogah, as he sees fit. Const. No. 1281.

No person is ex-
empted from the
performance of
such duties by rea-
son of place of
birth or descent.

2417. No person whatever, being the owner, holder, or farmer of any property in land, or in any emoluments issuing out of land, in any part of the territories under the government of the East India Company, whether in perpetuity or for a term, or being a local agent or manager of any such property, is by reason of his place of birth, or by reason

of his descent, exempt from any public charge or assessment, or from any duty connected with the police, or with the salt and opium revenue, or from any duty whatsoever of a public nature, to which he would otherwise be subject, as the owner or holder of such property or as a local agent or manager thereof. Act II. 1853, sect. 1.

2418. For the non-payment of any such public charge or assessment, or for the breach of any such duty as aforesaid, or for any neglect or misconduct in the discharge thereof, every person, whatever may have been his place of birth, or his descent, shall be subject to the same laws, regulations, and procedure, and to the same jurisdictions, as if he were a native, of the said territories. Act II. 1853, sect. 2.

All persons liable to the same procedure and penalties.

2419. In the case of a minor whose estate is not under the court of wards, the executor or guardian must, during the minority, stand in the place of the minor, and be subject to all the rules of suit and defence to which the minor himself would be subject were he not a minor. Const. No. 335.

Guardians of minors, not under the court of wards, are responsible ;

2420. The magistrate is to take particular care to see, that in the government khas mahals the same police rules are obeyed by the talsildars and village officers, as are in force according to the law in private zameendaries. In case of this not being done, he is immediately to report the instances of neglect to the superintendent of police, that measures may be taken to have the same remedied ; but the transmission of such report is not to cause the magistrate to postpone the issue of any orders, which he is authorized by law to pass. C. O. Sup. Pol. L. P. No. 4 of 1840.

and the same rules are to be observed in the government khas mahals.

2421. If the magistrate has grounds to suspect that any zameendar, talookdar, or other proprietor of land, whether malgoozaree or lakhiraj ; any sudder farmer or under renter of land of any description ; any dependant talookdar ; any naib or other local agent ; or any native officer employed in the collection of the revenues or rents of land on the part of government, or of the court of wards ; has afforded any actual assistance in harbouring a dacoit, kozak, thug, budhuck, or other robber, that is, if such person is suspected of having afforded to the said offender lodging, money, grain, or other supplies ; or that he has committed any other overt act, tending to aid the offender in his depredations upon the community, or to evade the pursuit of justice ; or that he has received any present or nuzzur, either in money or goods, from the said offender ; the magistrate is to call upon the person suspected of having so offended for his reply ; and if it appears upon a full and impartial inquiry, that he has been actually guilty of the serious offence ascribed to him, the magistrate, in addition to the punishment mentioned in the preceding section [*i. e.*, imprisonment for 6 months, and a fine of 200 rupees, commutable if not paid to imprisonment for a further period not exceeding 6 months longer], is to adjudge the estate or farm held by him (supposing him to be a sudder zameendar, talookdar, or farmer) forfeited to government. Provided, however, that, previously to carrying the judgment of forfeiture into execution, the magistrate is to submit his proceedings on the subject to the nizamat adawlut, who are to confirm or annul the judgment so passed, according as they are of opinion that the charge has been duly established or otherwise. Provided moreover that, in the event of their

Penalties to which landholders are liable for harbouring dacoits or other robbers ; and mode of procedure in such cases.

confirming the judgment, the nizamat adawlut are to report the case to government.(a)
Reg. VI. 1810, sect. 4.

Proprietors of lakhiraj lands and durputnee talookdars do not come within the above description of persons.

2422. Proprietors of lakhiraj lands and durputnee talookdars are exempt from the penalties prescribed by the above section, the provisions of which apply exclusively to a sudder zumeendar, talookdar, or farmer. They are liable to punishment under the succeeding section. Const. No. 63.

Penalties to which other persons, not landholders, are liable for such offence;

2423. Should the person convicted of the offence mentioned in the preceding section not be a proprietor or sudder farmer of land, the magistrate is to sentence him, in addition to the fine and imprisonment noticed therein, to such further fine and imprisonment as he deems proportioned to his offence; but previously to carrying such further judgment into effect, the magistrate is to submit his proceedings to the nizamat adawlut, who are finally to confirm, amend, or rescind the decision, as appears to them to be just and proper. Should the person so offending be also an officer of government, the nizamat adawlut is at the same time to order him to be dismissed from his office, and is further to report to government, whether it appears expedient that the offender should be declared incapable of again serving government in any public capacity. Reg. VI. 1810, sect. 5.

and if offender is an officer of government.

Example of punishment of landholder conniving at affray.

2424. A landed proprietor was convicted of having had previous knowledge of, and conniving at, an affray attended with wounding; and was sentenced to a fine of 500 rupees, or in default imprisonment without labor for 3 years. N. A. R. vol. 5, page 41.

SECTION III.

OF THEIR DUTIES IN THE APPREHENSION OF ABSCONDED OFFENDERS.

Registers of escaped convicts and persons absconded to be kept up by the magistrate;

2425. The magistrates are to keep up and regularly revise, according to the forms given in Nos. 1 and 3 (Nos. 1 and 2 of appendix B), a register of convicts who have broken jail, or have otherwise effected their escape, and a register of persons charged with or suspected of the commission of specific crimes of a heinous nature, who have eluded the pursuit of justice: copies of these registers are to be forwarded half-yearly(b) to the superintendent of police. Reg. III. 1812, sect. 9, cls. 1. and 2.

and lists to be prepared therefrom half-yearly, or oftener, and transmitted to the laud-

2426. At the expiration of every six months, or oftener, when circumstances appear to require it, the magistrates are to cause lists to be prepared from these registers of all persons therein named, who have not been apprehended; and are to transmit copies of

(a) It was held by the sudder court, in the trial of a zumeendar (Juggesir Dhuttachary) for secreting in his house a notorious dacoit, that a conviction of the latter must be had before any person could be convicted of neglecting to give due information regarding him, or of harbouring him. I cannot find the trial among the printed reports; and the soundness of the dictum appears doubtful, for the offence of the harbourer depends more on the known character of the dacoit than on his conviction. There are two cases reported, one in N. A. R. vol. 5, page 153, and the other in Reports L. P. 1854, part 1, page 272, in which persons have been charged with harbouring dacoits; but in the one case the proceedings were incomplete, and in the other the evidence adduced was insufficient for conviction.

(b) It appears from C. O. Sup Pol. L. P. No. 6 of 1845, that these are required only annually.

such lists to the principal landholders, farmers, and managers of land, together with warrants for the apprehension of the persons therein named, agreeably to the forms Nos. 4 and 6 (Nos. 30 and 31 of appendix A). Transcripts of the lists thus prepared are to be at the same time transmitted by the magistrates under their official seal and signature to the police darogahs for their information. Reg. III. 1812, sect. 9, cl. 3.

holders with warrants for the apprehension of the persons named therein ;
copies to be sent also to the police darogahs :

2427. The magistrates are to be careful to obtain from the landholders, farmers, and managers of land, or from their representatives, to whom such lists and warrants are delivered, written acknowledgments of the receipt of them. Reg. III. 1812, sect. 9, cl. 4.

and written acknowledgment of their receipt required from the landholders.

2428. It is only in the case of *crimes of a heinous nature*, that a magistrate can address a warrant to a landholder for the apprehension of an offender under this law. A warrant which did not contain a specification of the crime, with which the absconded person was charged, was held to be insufficient and invalid, and one therefore which the landholder could not legally put in force. Reports *L. P.* 1853, part 1, page 577.

Such warrants can be issued only in heinous offences ; and must contain specification of crime charged.

2429. All zumeendars, talookdars, and other proprietors of land, whether malgoozaree or lakhiraj; all sudder farmers and under-renters of land of every description; all dependant talookdars; all naibs and other local agents; all native officers employed in the collection of the revenues and rents of land on the part of government, or of the court of wards; to whom the lists and warrants have been delivered, are authorized either to cause the immediate apprehension of any of the persons named in either of the lists, who are found within the limits of the estates held or managed by them; or to apply to the nearest police officer for any aid which may be required in the execution of that duty: or simply to communicate to such officer such information as has been obtained respecting the place, to which the persons in question resort, or in which they are concealed. Reg. III. 1812, sect. 9, cl. 5.

Landholders, &c. to whom such lists and warrants are sent, may apprehend the persons named therein.

2430. It was held that a requisition by a magistrate from the zumeendars of villages, within a certain distance from that where an affray attended with homicide occurred, of certificates that the absconded offenders implicated in the affray were not within the limits of their estates, was not warranted by the above provisions.(a) Const. No. 1352.

But landholders cannot be called upon to give certificates that absconded offenders are not within the limits of their estates.

2431. Persons who are apprehended under the provisions of this regulation are to be delivered as speedily as possible into the charge of the nearest police officer for the purpose of being forwarded under safe custody to the magistrate; and an acknowledgment is uniformly to be given by such police officer, specifying the names of the prisoners, and the date on which they were delivered into his charge. Reg. III. 1812, sect. 9, cl. 6.

Such persons when apprehended are to be delivered into the charge of the nearest police officer.

2432. The several zumeendars, farmers, and local agents, to whom warrants and lists of public offenders have been furnished under these provisions, are required to transmit to the magistrates, on the 30th June and 31st December in each succeeding year, returns according to the form No. 7 (No. 3 of appendix B) of all offenders who have been appre-

Zumeendars, &c. are to furnish half-yearly reports of the persons so apprehended.

(a) But where a process is issued against a particular person, who is absent or has absconded, the proprietor, manager, or head person of the village, in which he is said to reside, may be called upon to furnish a written certificate of his absence, engaging therein either to cause his attendance on his return to the village or to give information at the thana of his arrival. See paras : 1570 and 1571.

hended by them, or by means of information given by them to any police officer during the preceding six months; counterparts of which returns are at the same time to be transmitted by the several zumeendars, farmers, or local agents, by means of the public dāk, to the office of the superintendent of police. Reg. III. 1812, sect. 9, cl. 7.

So, darogahs are to furnish half-yearly reports of such persons apprehended by them.

2433. In like manner the darogahs are to transmit, at the same periods, returns of all persons named in the lists with which they have been furnished, who have been apprehended by them during the preceding six months, accompanied by any explanation which they wish to offer in the event of no persons having been apprehended; copies of the prescribed returns and explanations are at the same time to be forwarded by the police darogahs by the public dāk to the superintendent of police, and such returns are to be invariably made, whether any persons have been apprehended or otherwise, and are to be despatched on or before the 15th of January and July. Reg. III. 1812, sect. 9, cl. 8.

Magistrates to explain to zumeendars, &c. that they will be held guiltless of any consequences ensuing from resistance to the execution of such warrants.

2434. Magistrates are to cause it to be explained to all persons to whom warrants are granted for the apprehension of persons under the above provisions, that if in the legal execution of such warrants, either by themselves or by any person or persons acting under their authority, any resistance is made by the party named in the warrant, or by any other person (the said warrant being shown to the party so resisting) such zumeendar, farmer, or local agent, or other person acting under their authority, by whom the warrant is executed, is to be held guiltless with regard to any consequences, which ensue from such resistance to the execution thereof. Reg. III. 1812, sect. 10, cl. 1.

Resistance to such process how to be punished.

2435. Any resistance by any person whatever of any warrant or process of the court issued under this regulation, is to be punishable in the same manner, as is prescribed by the existing regulations for resistance of process of the magistrates. Reg. III. 1812, sect. 10, cl. 2.

Zumeendars, &c. to be informed that they will not be required to prosecute or attend the courts in such cases.

2436. The magistrates are to cause it to be carefully explained to the zumeendars, farmers, and their local agents, to whom warrants are granted under this regulation, that they will not be required either to become prosecutors, or to attend the court, or to adduce evidence, or otherwise be subjected to any personal inconvenience or expense on account of any charge or prosecution, which is depending or is instituted against any person legally apprehended by them under this regulation, or who are apprehended by means of any information which they furnish to any police officers. Reg. III. 1812, sect. 11, cl. 1.

Evidence as to persons so apprehended is to be procured through the regular police officers.

2437. In the event of any evidence being required by the magistrate in regard to the general character of any party apprehended by means of any zumeendar, farmer, or local agent, or in respect to any other point or matter which is not furnished by the proceedings previously held by the court, or by any other records of the magistrate's office, the magistrate is to cause such evidence to be procured by means of the regular police officers. Reg. III. 1812, sect. 11, cl. 2.

Penalties for neglect or misconduct of zumeendars, &c. in the performance of the duty herein prescribed.

2438. Whenever a magistrate has grounds to believe that any zumeendar, farmer, or manager of land, has been guilty of any neglect or misconduct in the discharge of the duty imposed on him by the above provisions, he is to call upon him to answer to the charge; and, if it appears upon a full and impartial inquiry, that the accused has been

actually guilty of such neglect or misconduct, the magistrate is to sentence him to pay such a fine to government and to suffer imprisonment for such a period as he deems proportioned to the offence, not exceeding the limitation prescribed by sect. 19. Reg. IX. 1807, viz. imprisonment for six months, and a fine of 200 rupees, commutable, if not paid, to imprisonment for a further period not exceeding six months longer. Reg. III. 1812, sect. 12.

2439. The magistrates are empowered to grant such lists and warrants as are described above to any individual with his consent not being a zumeendar, farmer, or local agent for the management of lands, or regular police officer of government; and the provisions of this regulation are to be held applicable to the legal execution of any warrant of the magistrate by any person so employed. Reg. III. 1812, sect. 13.

Magistrates may grant such lists and warrants to persons not being zumeendars, &c. with their own consent; and these rules are applicable to such persons.

2440. If any zumeendar, farmer, local manager, or other person to whom a magistrate has issued a warrant or order, in pursuance of the above rules, or of any other regulation in force, for the apprehension of a person or persons proclaimed or charged with or suspected of a crime, applies to an officer of police for co-operation and support in the execution of such warrant or order; the police officer, to whom the application is made, is to afford every assistance in his power for the due enforcement of the process; and, if required to do so, is to receive charge of the prisoner from the zumeendar, farmer, local agent, or other person, and is to grant a written acknowledgment specifying the name of the prisoner and the date on which he was delivered into his charge; he is also without delay to forward the prisoner under safe custody to the magistrate. If the person named in the application made to the police officer is not apprehended, the particulars of the application and of the measures taken in consequence are to be recorded for the information of the magistrate in the thana diary. Reg. XX. 1817, sect. 26, cl. 13.

Police officers are to assist the zumeendars, &c. in carrying the above rules into effect.

SECTION IV.

OF TREATMENT OF LANDHOLDERS BY MAGISTRATES; AND MISCELLANEOUS RULES.

2441. It is of the greatest importance that the magistrate should acquire the assistance of the European and native landholders (and indeed of the people generally) in the district in the detection and suppression of crimes; and he should make the obtaining of this one of the principal objects of his attention. C. O. Sup. Pol. L. P. No. 13 of 1846.

Importance of acquiring the assistance of landholders.

2442. A magistrate succeeded in obtaining the co-operation of the zumeendars, and almost every description of people, to an extraordinary degree, by assembling and explaining to the naibs and agents of the landholders the purport and intention of the regulations, the assistance and co-operation expected from them, and the consequences of any omission or neglect on their part either to assist the police officers, or to deliver up notorious dacoits,

Mode in which a magistrate succeeded in gaining their co-operation.

vagrants, or persons of bad or suspicious character supposed to subsist by depredations on the public. C. O. No. 53 of vol. 1.

Mochulkas not to be taken from them with such object.

Any individuals may apprehend persons in the actual commission of crimes.

Mode in which zumeendars should be treated by the magistrates.

2443. In pursuing the system pointed out in the above order, the magistrate is not to take mochulkas from the zumeendars, or munduls, or ryots; it is sufficient that the regulations prescribe the duties to be performed by such people, and the adequate penalties for neglect. It is not the policy of government to invest the zumeendars with power to apprehend persons on the ground of their being known robbers or vagrants; but to restrict their agency to the communication to the magistrate and police officers of early information respecting the commission of public offences, and at the same time to withhold from them all positive power of interference in matters of that nature, in which experience has shown that they could not safely be trusted. It is of course to be understood that the zumeendars, like any other individuals, are competent to apprehend persons in the actual commission of public crimes. C. O. No. 80 of vol. 1.

2444. Much of the reluctance felt by proprietors and managers of estates to give their ready and active assistance in matters of police, is not unfrequently to be ascribed to an injudicious and intemperate use of the authority vested in the magistrates to enforce certain police duties from the zumeendars. The discharge of those duties by the proprietors and managers of estates, or their agents, is undoubtedly essential to an efficient police; but a harassing, vexatious, and indiscriminate interposition of the magistrate's authority, in cases of trifling importance, is not calculated to secure their useful co-operation. If the proprietors of estates are compelled to attend at the magistrate's cutcherry, to answer for every petty inattention or supposed irregularity in the discharge of the duties entrusted to them, they will naturally be led to avoid residing on their estates, and to thwart rather than forward the views of the magistrates. The powers vested in the magistrates are abundantly sufficient to enable them to visit with severity any frequent disregard or violent breach of the police duties intrusted to zumeendars; but their willing, and cordial, and really useful aid is to be obtained only by a temperate and conciliatory, though firm exercise of those powers; by a liberal consideration of trivial errors and defects; by an uniform acknowledgment of useful services, and by the willing distribution of praise and reward when merited. C. O. No. 241 of vol. 1.

Rules for the procedure of magistrate on receiving report of a zumeendar's neglect of police duties.

2445. On receiving a report of alleged neglect of police duties on the part of any landholder, the magistrate is not to require his personal attendance at the court, before calling upon him to furnish, within a week or ten days, a written explanation of the charge brought against him. Should the explanation be unsatisfactory, or should none be afforded within the time, the magistrate is to require him to appear on an appointed day, in person or by mokhtar, to answer the charge. On his obeying the summons he is to be careful to enter immediately upon the enquiry, avoiding all delay by summoning the witnesses in support of the charge to appear on the appointed day, and by directing the accused to produce at the same time any witnesses whose evidence he may desire to offer in his own defence. The offence being one of a bailable nature, the accused or his agent should not be placed in custody, when required to attend the investigation into the charges.

C. O. No. 52 of vol. 3. Where the magistrate did not follow this course, his orders were reversed by the court. Reports *L. P.* 1853, part 1, page 732.

2446. A zumeendar having exerted himself in securing the parties suspected of a murder, and in sending information to the police, the court considered the magistrate to have acted injudiciously in compelling his attendance as a witness, since his evidence under the circumstances of the case was superfluous. "Magistrates," observed one of the judges "often complain, and with justice, of the want of a disposition in the zumeendars to second their exertions; but nothing is so likely to slacken the zeal of that class of men, as the apprehension that they may have to give evidence as a necessary consequence of any successful effort on their part in aid of the police." *N. A. R.* vol. 5, page 9.

Example of the injudicious summoning of a zumeendar to give evidence.

2447. Peons entrusted with perwanahs addressed to landholders or their officers, for assistance to be rendered to the police on emergencies, or for other purposes, are not to exact tulubana from the parties. C. O. No. 33 of vol. 3.

Landholders are not to pay peons' tulubana when addressed on police matters.

2448. Zumeendars, independent talookdars, and other actual proprietors of land, dependent talookdars, farmers of land holding farms immediately of government, and all persons farming lands of the above mentioned descriptions of landholders and farmers of land, and their respective officers, agents, servants, dependents, and ryots, are prohibited from taking cognizance of, or interfering in, matters or causes coming within the jurisdiction of the courts of civil judicature, or the sessions courts or the magistrates, under pain of being liable to the payment of such fine to government, and damages to the party injured as the court of judicature in which they are prosecuted for the act deems it proper to impose and award. *Beng. Reg.* VIII. 1793, sect. 66.

Zumeendars, &c. are prohibited from taking cognizance of, or interfering in, matters coming within the jurisdiction of the courts.

2449. Landholders and farmers of land are prohibited confining or inflicting corporal punishment on any under-farmer, ryot, or dependant talookdar, or putteedar, or their sureties, to enforce payment of arrears of rent or revenue. If any landholder or farmer offends against this prohibition, the person so punished or confined is at liberty either to prosecute the offender for assault or imprisonment in the criminal court, or to institute a suit against him in the civil court. *Beng. Reg.* XVII. 1793, sect. 28. *Ben. Reg.* XLV. 1795, sect. 26. *Ced. Prov. Reg.* XXVIII. 1803, sect. 26.

Landholders are prohibited from confining or inflicting corporal punishment on any under-tenants.

2450. Landholders, farmers, and other local agents, and indigo planters and other persons, are prohibited from using stocks, or any other instrument of restraint, for the purpose of confining ryots, or other individuals indebted to them on any account whatever; and darogahs of police are to report to the magistrates, for such orders and process as appears proper under the general regulations, all instances which come to their knowledge of a violation of this rule. *Reg.* XX. 1817, sect. 27, cl. 6.

Landholders, &c. are prohibited from using stocks.

2451. Landholders have the power of summoning, and, if necessary, of compelling, the attendance of their tenants for the adjustment of their rents, or for any other just purpose, or of measuring any land within their respective estates which are liable to measurement under the conditions upon which such land has been leased or held. For the just exercise of such rights and powers, the landholders are not required to make any previous applica-

Landholders may compel the attendance of any ryot,

but are answerable for the abuse or unjust exercise of this power.

tion to the courts of justice; and any person opposing them therein is liable, on proof in the dewanny adawlut, to full damages and all costs, besides being subject, for any breach of the peace, to prosecution and punishment in the criminal courts. But the landholders, their agents and representatives, are answerable for any abuse or unjust exercise of these powers; and, on proof thereof by the party aggrieved in the dewanny adawlut, are liable to full costs and damages, besides a fine to government if the case appears to deserve it. *Beng. Reg. VII. 1799, sect. 15, cl. 8. Ben. Reg. V. 1800, sect. 14, cl. 8. Ced. Prov. Reg. XXVIII. 1803, sect. 32, cl. 8.*

Explanation of the above rule; and how far the magistrate may interfere.

2452. The sudder court expressed their inability to define exactly and generally what degree of power it was intended by the use of the term "compulsion" in the above provisions to confer on the landholders in enforcing the attendance of their tenants. The magistrate was directed, in the event of a complaint being preferred to him of the abuse of that power, to decide from the evidence whether any unnecessary and unauthorized degree of severity had been exercised or not. *Const. No. 382.*

Landholders cannot be compelled to repair roads,

2453. There is no regulation which authorizes a magistrate to compel a zumeendar or other landholder to repair the public roads passing through his village or estate. *Const. No. 1072.*

or to provide police buildings;

2454. A magistrate is not authorized to call upon a zumeendar to provide a building for the residence of such police officers as are stationed upon his estate under sect. 8, *Reg. XVII. 1817 [i. e. outposts]. Const. No. 1247.*

nor be prohibited from establishing hâths in their estates,

2455. Zumeendars and other proprietors of land have a right to establish hâths or fairs on their own lands, and to hold them on any day that they think proper; and it is not competent to the magistrates to prohibit the establishment of a hâth or fair, or to fix the day on which it may be held, on the plea of its interfering with the right of a neighbouring hâth-holder, or on any other ground. *C. O. No. 66 of vol. 2.*

(magistrates are to interfere in such cases only to prevent a breach of the peace)

2456. The above order refers only to new disputes regarding hâths, with which the magistrate should not interfere unless it is necessary to prevent a breach of the peace; but it has been twice held that summary orders, fixing the days on which a hâth was to be held, passed before the promulgation of the above circular order, were to be considered in full force until set aside by a regular civil suit. *Const. Nos. 639 and 937.*

nor from levying choongee.

2457. Zumeendars cannot be prohibited from levying "choongee," (a) a cess sanctioned by established custom, within the precincts of their estates. *Const. No. 973.*

(a) In Sir H. M. Elliot's curious and interesting "Supplemental Glossary" this word is explained to be:—"Illegal abstraction of handfuls of market produce. It is frequently, however, given voluntarily as a sort of rent for the use of market conveniences, such as booths, sheds, &c.; and in this sense is equivalent to the *byluk* of the Deccan and the English *board half-penny*."

CHAPTER V.

OF NATIVE MINISTERIAL OFFICERS.

SECTION I.

OF APPOINTMENT, REMOVAL, AND FUNCTIONS.

2458. The nizamut adawlut, the superintendent of police, and the session judge, may exercise, without reporting their proceedings for the sanction of government, the power of appointing, removing, and accepting the resignation of the principal ministerial native officers acting under them respectively, as well as all other native officers on their respective establishments, excepting the law officers.* Reg. VIII. 1809, sect. 3.

Of superior courts

who have the final power of dismissing and appointing their officers.

* regarding whom, see separate section.

2459. Whenever the head ministerial native officers of the above mentioned authorities are desirous of resigning their offices, they are required to receive and record such resignations in open court. Reg. V. 1804, sect. 5.

Resignations always to be received in open court.

2460. Whenever the authorities specified above see cause for the removal of any of their head native officers on the ground of misconduct, incapacity, or otherwise, they are to communicate to such officer the grounds upon which they consider him undeserving of continuance in his station, and to call upon him to state what he has to offer in his defence. Reg. V. 1804, sect. 6.

Ground of removal is to be specified in such cases.

2461. The civil and session judge is required to report to the sudder court, for their information, the removal or resignation of the serishtadar, peshkar, or nazir, attached to his court within ten days after the same has taken place. The names of the individuals nominated to such offices are also to be reported to the court in the form No. 24 of appendix C, within the same period after the nomination has occurred. C. O. No. 73 of vol. 3. *L. P.*

The removal or resignation of the head officers of the judge's court to be reported to nizamut adawlut.

2462. Whenever any of the ministerial officers attached to the court of the civil and session judge, receiving a salary of not less than ten rupees a month, is dismissed from the public service for misconduct, a report of the same is to be submitted to the sudder court, according to form No. 25 of appendix C, with a view to a register of their names being kept in conformity to the order of the Court of Directors. An extract from the register is to be forwarded to the judge annually, to enable him to guard against the admission of improper persons into the public offices; and these extracts are to be communicated to the several authorities of the district, so as to make the register of each department available to the heads of the other departments. C. O. Nos. 115 and 125 of vol. 3.

Session judge to report dismissal of officers in order to the formation of a register.

2463. The nizamut adawlut, the superintendent of police, and the session judge, are to transmit to the civil auditor a monthly report of any appointments or removals, which

Monthly report of appointments and removals to be

furnished to the civil auditor.

are sanctioned, under the authority vested in them by the above rules, either of the native officers on their own establishments, or of those on the establishments of the magistrates. Reg. V. 1804, sect. 21. Reg. VIII. 1809, sect. 11, cl. 2.

Character books to be kept of all amlah drawing ten rupees and upwards.

* See para. 2069.

2464. Judges are to keep up character books of their clerks, serishtadars, record-keepers, nazirs, mohurirs, and all ministerial officers drawing ten rupees a month and upwards, under the same rules as those prescribed for commissioners and magistrates by the Order, No. 244A, January 23, 1855.* Entries therein are invariably to be made by the head of the office with his own hand. C. O. S. D. A., No. 775, April 30, 1855, *W. P.*

Of magistrate.

Superintendent of police has power to confirm the appointments and removals of all native officers receiving salary of 10 Rs. or upwards.

2465. The superintendents of police are empowered to confirm the appointment, removal, and resignation of the principal ministerial officers of the magistrates, as well as of the record-keepers, and the whole of the native officers on the establishments of the magistrates and subordinate courts receiving a salary of 10 rupees per mensem or upwards, within their respective divisions, on receiving from the magistrates the reports specified in the following clauses. Reg. VIII. 1809, sect. 5, cl. 1; and sect. 7, cl. 1. Reg. I. 1829, sect. 3, cl. 1. Act XXIV. 1837, sect. 4.

All such officers to be nominated by the magistrate, and report to be made to the superintendent of police.

2466. The magistrates are to nominate all such officers, and are in consequence to be held responsible for selecting persons duly qualified. They are to report fully to the superintendent of police any information obtained by them respecting the past employments, character, and qualifications of the persons proposed by them to fill the vacant offices; and it is competent to the superintendent of police to confirm the appointment of the person so nominated, if he sees no objection thereto; or to call for any further information that appears requisite respecting the past employments, character, or qualifications of the person proposed; or, if the appointment of such person appears objectionable, to require the magistrate to nominate another person. No appointment is to be considered final, till so confirmed. But the magistrate is authorized to make temporary appointments of persons duly qualified, in cases of death, removal, suspension, or resignation, immediately reporting the same for the information of the superintendent of police. Reg. VIII. 1809, sect. 5, cl. 2; and sect. 7, cl. 2.

Magistrate may make temporary appointments;

and persons so appointed may legally act before confirmation.

2467. Persons so appointed to officiate can legally act as officers of the court immediately on their nominations, before their appointments have been reported to the commissioner of circuit. Const. No. 618.

The nominating officer is to certify that the person nominated is not his private servant.

* r. paras. 2501 and 2502.

2468. In all nominations of native officers, the officer making such nomination is required to state explicitly, that the person so nominated is not disqualified under the provisions of this regulation [*i. e.* is not the private servant of such officer]*; and it is at all times the duty of the superintendent of police to see that these provisions are observed, as well as to report any wilful infringement of them to government. Reg. VIII. 1825, sect. 4.

The resignation of such officer is to be received in open court; and transmitted to the su-

2469. Whenever any native ministerial officer is desirous of resigning his office, his resignation is to be received and recorded by the magistrate in open court; and is to be transmitted without delay to the superintendent of police with the nomination of a proper

person to be his successor, in conformity with the above provisions. Reg. VIII. 1809, sect. 5, cl. 3; and sect. 7, cl. 2. superintendent of police.

2470. When a magistrate sees cause for the removal of any such officer on the ground of misconduct, neglect of duty, experienced incapacity, or other disqualification, he is to report the circumstances of the case, with his opinion on the subject, to the superintendent of police, who is to pass such order as appears proper on the report so made; or to call for further information; or to direct any further inquiry which the nature and circumstances of the case require. Reg. VIII. 1809, sect. 5, cl. 4; sect. 7, cl. 2. The cause for the removal of any such officer is to be reported to the superintendent of police,

2471. The magistrate is to forward such report for confirmation to the superintendent of police without delay. C. O. Sup. Pol. *L. P.* No. 1 of 1838. without delay.

2472. On the dismissal of any ministerial officer, receiving a salary of not less than eight rupees per mensem, the magistrate is to forward a report of the same to the superintendent of police in the form No. 23 of appendix C, that he may prepare a register of the names of such persons, in conformity with the orders of the Court of Directors: an extract from this register is to be forwarded to the magistrate at the close of each year to enable him to guard against the admission of improper persons into the public offices. C. O. Sup. Pol. *L. P.* No. 10 of 1842. A special report of dismissed officers is to be made to the superintendent of police for the formation of a register.

2473. In cases of gross misconduct, neglect, or incapacity, such as to require the immediate suspension of any such officer, the magistrate is authorized to order the same, reporting it with the other information required from him to the superintendent of police. Reg. VIII. 1809, sect. 5, cl. 5; and sect. 7, cl. 2. Magistrate may immediately suspend officers in cases of gross misconduct.

2474. As a suspended officer is entitled, if restored, to the arrears of his salary, which have accrued during his exclusion from office, any extra charge, which arises from inattention to the orders for his restoration, may be retrenched, by order of government, from the allowances of the person by whose fault the restoration to office has been delayed after receipt of orders to that effect from a competent authority. C. O. No. 254 of vol. 1. Rule regarding salary of suspended officer, if restored.

2475. Any other inferior native officer forming part of the fixed establishments, whose salary does not amount to the sum of 10 rupees per mensem, may be appointed whenever vacancies occur in the situations of such officers, and on proof of misconduct or other sufficient cause may be removed by the magistrate, without any reference to any superior authority. But he is to record upon his proceedings the grounds upon which any native officer is removed by him; and he is required to exercise the power vested in him, in the appointment and removal of the inferior officers acting under him, with due regard to the public service and the rights of individuals, by selecting proper persons to fill all vacancies in the situations of such officers, and by continuing in office the persons appointed, whether by themselves or their predecessors, whilst they discharge the duties assigned to them with diligence and integrity. Reg. V. 1804, sect. 14. Reg. VIII. 1809, sect. 9. The appointment and removal of officers, drawing less salary than 10 rupees, rests with the magistrate. But he is to select proper persons; and is not to remove them without cause; and is to record his reasons for removing them.

2476. The magistrate's order in regard to the appointment and removal of native [ministerial] officers receiving a salary not exceeding ten rupees is in every respect final. Const. No. 940. His orders are final.

Magistrate may fine any officer one month's salary,

2477. The magistrate may in addition to the general powers vested in him by the regulations for the punishment of any specific crime or misdemeanor, fine any officer under his authority for neglect of duty in a sum equal to one month's salary, and cause the same to be levied by a stoppage of the fixed allowance payable to such officer. Reg. VIII. 1809, sect. 5, cl. 5; and sect. 7, cl. 2.

but cannot award a higher punishment.

2478. The magistrate is not authorized to sentence to hard labor an officer guilty merely of neglect of duty, nor to adjudge a fine of more than one month's salary. Const. Nos. 192 and 712.

Session judge cannot interfere with the orders of the magistrate regarding his officers.

2479. It is not competent to a session judge to interfere with any order passed by a magistrate regarding the appointment, suspension, or removal of any ministerial or police officer, the revision of which is entrusted to the superintendent of police. Act XXIV. 1837, sect. 5.

But he may direct the dismissal of any officer convicted of a criminal offence.

2480. A session judge, holding a jail delivery, or the court of nizamut adawlut, may order the dismissal of any native officer convicted before him, of a criminal offence, which under any express provision in the regulations is punishable by dismissal from office; or, though not so expressly declared, if the conduct of such native officer appears, from any proceeding before the sessions court or nizamut adawlut, to be such as to require his removal from the public situation held by him. On the same being notified to the magistrate, or other European public officer, under whom the native officer so dismissed has been employed, it is the duty of the magistrate, or other European officer, to take measures for the appointment of a successor to the vacant office in conformity with the regulations. Reg. XXV. 1814, sect. 15. Reg. XVII. 1816, sect. 7, cl. 8.

What appeals lie to the superintendent of police.

2481. The appeals of parties seeking redress from orders of magistrates dismissing them from their situations, such orders not being part of the sentence passed in any criminal trial, cannot be heard by the session judge, but lie under the law to the commissioner. C. O. No. 35 of vol. 3.

What appeals lie to judge.

2482. Appeals from the orders of the magistrate preferred by officers other than ministerial or police officers(a) lie to the session judge. C. O. No. 119 of vol. 3.

Appeals may be forwarded by dâk;

2483. Commissioners may receive and act upon petitions from suspended officers forwarded by the dâk, provided they are written on stamp paper. Const. No. 344.

or may be presented to the magistrate, who is to forward them with the papers of the case, if written on stamp paper and presented within the proper period.

2484. Ministerial officers dissatisfied with the orders of a magistrate, may present their petitions of appeal to the magistrate, if written on the proper stamp paper; and, if it be presented within the usual period allowed to appellants, the magistrate is bound to forward the appeal with the papers of the case for the orders of the superintendent of police. In case the officer suspended or dismissed does not present his petition of appeal to the magistrate within the period allowed, he is to refuse to accept it, and is to refer the officer to a personal appeal at the office of the superintendent. C. O. Sup. Pol. L. P. No. 20 of 1838.

(a) This order refers in the original to officers attached to the jails; but is of course, in regard to them, superseded by Act XVIII. 1844.

2485. If the course prescribed in the above order is not adopted by police officers appealing, they must forward to the superintendent with their petitions of appeal copies of the proceedings ordering their dismissal, without which their petitions will not be attended to. One of the two courses referred to must be followed. C. O. Sup. Pol. *L. P.* No. 24 of 1844.

If the appeal is forwarded by dāk, it must be accompanied by copies of the proceedings appealed against.

2486. When appeals are received by dāk, and no one is present at the station of the commissioner to attend at their hearing, they may, without objection, be taken up and disposed of as the commissioner may find to be most convenient, with reference to the other business which demands his attention. But where parties interested in an appeal, whether as principals or agents, are in attendance, the hearing should invariably be held by the commissioner in his public office, with a sufficient previous notice of the day fixed by him for the purpose, so that those concerned may have full facility for appearing, and for making such statements as they may wish to offer in support of their applications. The order on the appeal should also be passed in their presence, and personally explained to them by the commissioner. C. O. Govt. *W. P.* No. 49 A, January 11, 1854.

Facilities to be given for personal attendance of appellant during the hearing of his appeal.

2487. The superintendent of police is fully competent, of his own accord and on sufficient ground, to remove any of the officers, whom he is competent to remove on reference from the magistrate. Const. No. 62.

Superintendent of police may dismiss officers of his own accord.

2488. A commissioner of circuit has no power to declare a native officer perpetually excluded from future employ in his division, although he is of course competent to decline sanctioning his nomination to any responsible situation during the period he is in charge of the division. Const. No. 1065.

A commissioner cannot declare a person excluded from future employ in his division.

2489. The orders of the superintendents of police in regard to the appointment, suspension, or removal of a ministerial officer of a magistrate, passed under the provisions of this Act, are not open to revision by the nizamut adawlut. Act XXIV. 1837, sect. 6.

The nizamut adawlut cannot revise the orders of the superintendent of police.

2490. No report to the nizamut adawlut is necessary previous to the dismissal of any ministerial officer of a magistrate's court. It should be made to the superintendent of police, who is competent to pass such order as the case requires. Const. No. 792.

Magistrate need not report the dismissal of any officer to the nizamut adawlut.

2491. Nothing in this regulation is to be construed to preclude the government, or the court of nizamut adawlut, from ordering the removal of a native officer, upon just and sufficient ground appearing for such order; nor to prevent the exercise of the general authority vested in the nizamut adawlut by the regulations in force. Reg. VIII. 1809, sect. 13.

But government or the nizamut adawlut may order the dismissal of any officer.

2492. Appeals from orders for the removal of ministerial officers on the establishment of the magistrate and collector, employed indiscriminately in the departments of revenue and the administration of criminal justice, lie to the commissioner: unless a regular criminal trial has been held, in which case they would lie to the session judge. C. O. No. 177 of vol. 2.

Appeals from officers employed in both the revenue and judicial departments.

2493. A monthly report is to be made to the superintendent of police of the dismissals and appointments of ministerial officers, in addition to the reports made to him for confirmation, according to the form No. 7 of appendix F. C. O. Sup. Pol. *L. P.* No. 1 of 1839.

Monthly report of dismissals and appointments.

General rules.

All native officers are liable to removal without proof of any specific act of criminality.

The imposition of heavy fines is objectionable.

The unaccountable possession of much property is a sufficient ground for dismissal.

Mochulkas may be required from the native officers.

All native officers are to make a solemn declaration before entering upon the duties of their office.

The European officers are to attest such declarations.

2494. All native officers in the service of government are liable to removal from the public trusts committed to them, without proof of any specific act of criminality, whenever there is sufficient reason to believe them incapable, or neglectful, of their prescribed duties, or in any respect unworthy of public confidence. Reg VIII. 1809, sect. 5, cl. 5; sect. 7, cl. 2; and sect. 9.

2495. The imposition of heavy fines upon native servants is objectionable, as involving them in pecuniary difficulty, and inducing them to resort to improper practices for the purpose of indemnification. The preferable course is, when an officer refuses to do that which his official duty requires of him, to transfer at once the office to a more obedient holder. C. O. No. 60 of vol. 3.

2496. The fact of an officer's possessing much more property than the lawful emoluments of his office seem to authorize, without being able to give a reasonable account thereof, is a sufficient ground for presuming him a person unfit for public confidence. Const. No. 306.

2497. The criminal courts are authorized to require mochulkas or penal obligations for their good behaviour, in such sums as they judge proper, from their native officers. *Beng. Reg. XIII. 1793, sect. 2. Ced. Prov. Reg. XII. 1803, sect. 2.*

2498. The serishtadars, or other head native officers, munshis, mohurirs, and nazirs, record keepers, and treasurers, as well as all other native officers of the criminal courts holding any situation of trust and responsibility in the public service, previous to entering upon the execution of the duties of their offices, are to make and subscribe the following solemn declaration in open court, before the European authority to whom they are subject:—"I, A. B., appointed to the office of serishtadar [or as the case may be] to the nizamat adawlut [or other court] solemnly declare that I will truly and faithfully perform the duties of the office to which I have been nominated to the best of my knowledge and ability; that I will not receive, directly or indirectly, any present, or nuzzur, in money or effects of any kind, from any party whomsoever, on account of any suit to be instituted or which may be depending or have been decided in the court; that I will not knowingly permit any person or persons under my authority, or in my immediate service, to receive directly or indirectly any present or nuzzer, in money or effects, from any party or person whomsoever, on account of any suit to be instituted, or which may be depending, or have been decided in the court; and that I will not derive directly or indirectly any advantages or emoluments from my office, excepting such as the orders of government do or may authorize me to receive." *Beng. Reg. XIII. 1793, sect. 4. Ced. Prov. Reg. XII. 1803, sect. 4. Reg. XVIII. 1817, sect. 2, cls. 1, and 2; and sect. 3.*

2499. The European officers, before whom such declarations are required to be made, and subscribed, are to attest the same as publicly read and subscribed before them, in pursuance of the above provisions; and are to be careful to enforce a due observance of the rule therein contained by the native officers appointed to act under them. Reg. XVIII. 1817, sect. 2, cl. 3.

2500. The native officers attached to the courts are to procure all acts of the court to be executed; to translate and transcribe papers; and to arrange and keep the records of the court. They are to perform these duties in the manner, and conformably to the rules, which the head of the office to which they are attached thinks it proper to prescribe. The native officers of each court are not to interfere in any other manner, publicly or privately, in any cause or matter depending before the court, or which has been, or is intended to be, brought before it. *Beng. Reg. XIII. 1793, sect. 8. Ced. Prov. Reg. XII. 1803, sect. 11.*

Duties to be performed by native ministerial officers.

2501. The whole of the officers of government are prohibited, under penalty of dismissal from office, from employing, directly or indirectly, their private servants of whatever description, or any other persons not being public officers duly appointed or nominated in conformity with the rules in force relative to such appointments, in the discharge of any part of their public duties, or in the execution of any public duty, in which the person so employed has not been duly authorized to act. *Reg. VIII. 1825, sect. 2, cl. 1.*

Officers are prohibited from employing their private servants in the discharge of public duties;

2502. The whole of the judicial officers are, in like manner and under the same penalty, prohibited from employing any of the public officers on their establishment (not being peons, or other inferior servants, in personal attendance upon a judge, magistrate, or other officer of government in the judicial department) in the performance of any part of their private business, or in the execution of any private trust relating to their personal concerns. *Reg. VIII. 1825, sect. 2, cl. 2.*

and from employing public officers on their private business.

2503. The several officers of government in the judicial department, who are already restricted by their official oaths, or by the known declarations and orders of government, from deriving any personal advantage whatever from their fixed establishments of native officers, are further positively prohibited from making any alteration whatever in the distribution of the salaries of such officers, or in the number and designation of the several descriptions of native officers composing their authorized establishments, without the express sanction of government. *Reg. V. 1804, sect. 23.*

No alteration is to be made in the salaries or the number or designation of the native officers.

2504. Nothing in this regulation is to be construed to empower the superintendent of police to authorize any addition to, or alteration in the distribution of, the fixed public establishments without the special sanction of government. *Reg. VIII. 1809, sect. 12.*

Nor can the superintendent of police authorize any alteration or addition.

2505. Native ministerial officers are not, under any circumstances, to be entertained on lower salaries than those fixed by the government for the situations they hold. *C. O. No. 154 of vol. 3. L. P.*

Officers are not to be entertained on lower salaries than those fixed.

2506. The practice of keeping ministerial officers in acting capacities for long periods is highly objectionable: whenever an officer nominates an individual to act in any situation, whose confirmation in the same requires the sanction of superior authority, he is to make a report to such authority as to the fitness of the officiating person within the period of six months from the date of his original nomination. *C. O. S. D. A. No. 12, January 1, 1830.*

Officers are not to be kept acting.

2507. Nothing in this regulation is to be construed to establish a claim of inheritance to any public office whatever; or to prevent the abolition of any such office, by order

No office is hereditary.

of government, whenever it is judged unnecessary to continue the same for the public service. Reg. V. 1804, sect. 24.

Schedule of property is required from all native officers on their appointment.

2508. On the appointment of any native officer, who receives a salary of not less than 20 rupees per mensem, whether the situation to which he is nominated be of a judicial or ministerial nature, or connected with the police department, he is to be required to give a schedule of any landed property of which he may at the time be possessed, including not only land, the proprietary right of which is vested in him, but any land or other real property whatever may be the nature of the tenure by which he holds it, the description of tenure being also recorded in the schedule. It is at the same time to be explained to him that should he subsequently make further acquisitions of the same description, it will be incumbent on him to communicate the circumstance within one month from the date of acquisition; should he fail to do so, or should it appear that he has wilfully omitted in his schedule any such property belonging to him at the time of filing it, he is liable to dismissal from office. In the *Western Provinces*, these schedules are to be registered in the office of the collector of the zillah in which the officer is employed; and copies of the same sent to the collectors in whose zillahs the property therein included is situated. In the *Lower Provinces*, the schedules are to be registered in the office to which the individuals giving them are subordinate; and copies are to be sent to the collectors in whose districts the property specified is situated. C. O. Nos. 163, 166, and 170 of vol. 2.

Subsequent acquisition of property in the district is forbidden;

and report to be made if acquired by inheritance.

2509. The purchase, or acquisition in any other manner than by inheritance, by any person holding a judicial post, or any executive or ministerial office in the judicial or revenue department in the *Western Provinces*, of landed property or of any interest in land within the limits of the district, in which he serves, will subject the officer to the penalty of dismissal from his appointment: and the acquisition by such persons of any property or interest in land by inheritance must be immediately reported for the orders of the superior authority of the department. Govt. Order *W. P.* No. 1662 A, September 6, 1854.

Security is to be taken from all officers entrusted with public money.

Sufficiency of security to be tested yearly, and report made.

2510. Security is to be taken from treasurers, nazirs, and other officers, who, in the discharge of their public duty, have charge of money or property, whether public or belonging to private individuals; and the sureties are to bind themselves to make good all losses sustained by the default or fraud of the officer for whom they are bound. The amount of property to be pledged by the surety, and entered in the schedule at the foot of the bond, must be regulated according to the circumstances of each case and the amount or value of the money or property which may be likely to be left in the hands of the officer from whom the security is required: the surety is also to bind himself not to sell, or in other manner alienate the property in question until he is relieved from his responsibility. Care is to be taken to ascertain the sufficiency of the security; and its efficiency is to be carefully revised during the last week of December of each year; and a report of the result of the revision is to be submitted in the form No. 26 of appendix C. C. O. S. D. A. No. 34, September 23, 1831.

Report to be certified in particular form.

2511. The form prescribed above is to be uniformly engrossed on a sheet of foolscap paper; and the following certificate is to be inserted at the foot of it. "Certified that I have

revised the securities of the officers above mentioned, and that I consider them good and sufficient. (Signed) A. B. judge, or magistrate, as the case may be." C. O. No. 216 of vol. 2.

2512. There is no objection to its being left optional with parties, nominated to offices under government requiring the execution of a security bond, to have that bond prepared by their own advisers. It is at the discretion of heads of offices to accept such bonds on their own responsibility, or to refer them, for approval on the part of government, to the law officers of the Company. C. O. No. 72 of vol. 4. *L. P.*

Persons nominated to offices may have the security bonds prepared by their own advisers.

2513. Persons actually in the employment of government, whether in the civil or military department, are not liable to any charge for the preparation and execution of any documents connected with their appointments, which the law officers of the Company may be required to draw by the heads of the offices or departments in which such persons are employed. C. O. No. 77 of vol. 4. *L. P.* C. O. Sup. Pol. *L. P.* No. 2 of 1852.

And are not liable for the charges of preparation and execution by the law officers of government.

2514. Public officers vouching for the sufficiency of the securities render themselves responsible for the safety of the public funds committed to the charge of their ministerial officers, and they are to be held accountable for any insufficiency of security which is subsequently experienced. C. O. No. 171 of vol. 2.

Responsibility of officers vouching for the sufficiency of securities.

2515. In the *Lower Provinces*, the above security statements are to be forwarded by the magistrates to the superintendent of police, and not to the nizāmut adawlut. C. O. No. 87 of vol. 3. *L. P.* C. O. Sup. Pol. *L. P.* No. 22 of 1838.

These reports are to be sent to the superintendent of police in the Lower Provinces.

2516. In order that the security bonds may comprehend all the obligations assumed by the sureties, judicial officers (in the *Western Provinces*) are required to have them drawn out according to the formula No. 27 of appendix C: and in reporting the result of the annual revision, they are to certify that the bonds have been carefully examined and found to correspond in their terms with that formula; and that memorials thereof have been registered in pursuance of the following instructions. C. O. No. 188 of vol. 3. *W. P.*

Form of security bond to be used in the Western Provinces.

2517. With reference to the precedence granted to all registered documents by Acts I. and XIX. 1843, all security bonds executed by the treasurers, nazirs, and other ministerial officers attached to the judicial courts, and other documents likewise of a similar character, by the annulment or repudiation of which the interests of government are likely to be injuriously affected, are to be duly registered in conformity to the conditions of those enactments; [the authorities are to satisfy themselves that the lands, to which the registered security deeds relate, have not been already conveyed away by any previously registered deeds;](a) and such registration [and scrutiny](a) is to be deemed an indispensable preliminary to their acceptance as good and valid engagements. The fees attendant on this process are to be defrayed by those, from whom security is demanded, and whose tenure of office is dependant on their compliance with such requisition. C. O. No. 136 of vol. 3.

All security bonds are to be registered.

2518. If it be shown on a civil prosecution that the nazir of a criminal court has wilfully misrepresented the value or sufficiency of any security, in regard to which he has

Nazir is liable to pay damages for wilful misrepresentation.

(a) The words within brackets are not contained in the circular of the Western court.

tation of the sufficiency of security.

been directed to enquire and report, and that loss has ensued in consequence of such misrepresentation on his part, he would be liable to the payment of damages at the discretion of the court before whom the suit is brought. Const. No. 1014.

Rules for the endorsement and safe custody of public securities deposited in such cases.

2519. When deposits are made by the sureties in public securities, they are to be endorsed over to the official head of the office, and deposited for safe custody with the sub-treasurer of the general treasury. Such securities are returnable only under an official order from the secretary to the government in the department to which the depositor belongs. Under these circumstances, if, with the permission of government, the parties should so desire it, the sub-treasurer is to draw the interest accruing on the securities in his custody, and pay it over to the officer concerned, in cash if in Calcutta, or by bill on the revenue treasury of the district, if the deposit is for due performance of duty in the mofussil. Govt. order in C. O. Sup. Pol. L. P. No. 12 of 1845. C. O. Acc. Gen. No. 94, September 29, 1845.

Responsibility of collectorate treasurer taking charge of foudjaree treasury.

2520. When the treasurer of a collectorate is also required to take charge of the foudjaree treasury, it is incumbent on the collector to insert in the security bond a clause rendering the sureties responsible for any abuse of trust by the treasurer in the foudjaree department. C. O. No. 51 of vol. 3 L. P. Under C. O. May 28, 1847, the separate treasuries of the judge's and of the magistrate's courts are abolished. The duties of the office are to be discharged by the collector's treasurer.

One department is not to receive applications for employment from persons in the employ of another department.

2521. All departments of the state are required not only not to invite, but positively to refuse to entertain an application for employment from any native, who is at the time of making the application in the public employ of a government office or department, unless they have previously received the full acquiescence of the head of such office or department. C. O. No. 66 of vol. 3.

Persons dismissed from one department (except for inaptitude in that department) are not eligible for appointment in another department.

2522. Men, who have been dismissed for misconduct from one department, are not to be considered eligible for re-employment in any other department. It is a wholesome check upon negligence and dishonesty for the servants of government clearly to understand, that probity and diligence are the only means of retaining employment under government. This rule does not apply to cases of inaptitude for some particular branch of occupation, to which a native servant may have been originally appointed, and from which it may have been necessary on that account only to displace him. C. O. Nos. 46 and 75 of vol. 4. L. P.

Representations from uncovenanted officers to government to be forwarded direct.

2523. Representations from uncovenanted officers relating to their services are not to be forwarded to government by the head of the office. All persons desirous of bringing their claims prominently to the notice of government should forward their representations themselves by the public post. C. O. No. 68 of vol. 3. L. P. C. O. Sup. Pol. L. P. No. 23 of 1840.

Travelling allowance.
Lower Provinces.

2524. All amlahs, when on duty in the interior of the district, are to receive 3-10th extra pay as travelling allowance; except when they are required to accompany their superiors by dawk, in which case they are to receive an allowance at the rate of 4 annas per mile, and during halts at the rate authorized above. Lower Provinces, C. O. S. D. A.

No. 50, September 20, 1839. C. O. No. 212 of vol. 3. *L. P.* C. O. Sup. Pol. *L. P.* No. 13 of 1839; and No. 10 of 1845.

2525. The travelling allowance of all uncovenanted officers, christian or native, in the revenue, judicial, and political branches of the service, as detailed below, is to be 3-10th of the salary drawn by each individual. When the officer is required to proceed by dāk, under special authority from government, he is to receive at the rate of 4 annas per mile during the time he may so travel, and on the days on which he may not so travel he is to receive at the aforesaid rate of 3-10th of his salary. This scale of allowance is applicable to the fixed establishments of public covenanted officers, when moving from the station, or usual fixed residence of such officers;—to all principal sudder ameens, sudder ameens, moon-siffs, deputy collectors, and deputy magistrates, when required to travel within their districts, or during transit from one district to another, when ordered on the public service, and without a view to their promotion or to their acting in a higher grade;—to all nujeebs, burkundazes, or men of the provincial battalions, when ordered beyond the limits of the district or division within which they are ordinarily required to serve. Govt. Order *W. P.* July 11, 1846. Western Provinces.

2526. The following are the rules for regulating leave of absence and acting allowances to uncovenanted public officers :— **Leave of absence.**

Section I. Leave of absence to officers not in the covenanted service of the East India Company, receiving their appointments direct from government, will be granted by the government only under which office is held, on application being made publicly through the regular channel in the department to which the applicant may belong; but in respect of all other officers, it will be optional with the local governments to delegate to heads of offices, or departments, power to act upon the rules without special reference to higher authority. *Section II.* Absence without leave will render the absentee liable to loss of appointment, and will be attended with entire forfeiture of salary for the whole period of such absence. *Section III.* No leave of absence shall have any retrospective effect, except in cases of severe illness to be attested by medical certificate conforming in every respect to the directions contained in section 4. *Section IV.* When an application for leave of absence is made on the ground of ill health, it must be accompanied by a statement of the case from the medical man by whom the applicant has been attended, distinctly stating from personal observation the nature of the disease, the symptoms by which it is manifested, the causes by which it has been probably produced, and the period during which it has existed so far as the knowledge of the medical officer extends; and by a certificate from the chief medical officer of the station or district, or if at a presidency town from a presidency or other official surgeon, certifying after careful personal investigation, the necessity for temporary removal, and the period for which absence is, to the best of his judgment, absolutely requisite for restoration to health. If the requisite leave be for a longer period than six months, the certificate must in the first instance be countersigned by the superintending surgeon of the division in which the applicant may be located; and, in cases of leave beyond sea, be afterwards submitted, with the statement of the case, for the consideration and coun-

**OFFICERS
RECEIVING AP-
POINTMENTS DI-
RECT FROM GO-
VERNMENT.**
Applications.

If taken without leave.

No retrospective effect.

Sick leave, appli-
cation for, to be
accompanied by
medical statement
of the case.

If sick leave be
required for more
than six months.

tersignature of the members of the medical board. The certificate shall be given in the following form:—I, A. B., surgeon at or of — do hereby certify that E. F. (here enter designation of office) is in a bad state of health, and I solemnly and sincerely declare that, according to the best of my judgment, a change of air is essentially necessary to his recovery; and that the circumstances of his case are such as to render leave of absence for the period of — absolutely necessary (or highly desirable). The following form shall be observed by the superintending surgeon and members of the medical board in countersigning the certificate:—I (or we) do hereby certify that, according to the best of my (or our) professional judgment, after careful consideration of his case, I (or we) believe the state of health of E. F. to be such, as to render leave of absence for a period of — absolutely necessary (or highly desirable) for his recovery. An application for extension of leave must, if the applicant be in India, be accompanied by a certificate to a like effect from the medical officer by whom the applicant is attended, together with a statement showing sufficient reason for the extension solicited; and such certificate must be countersigned by the members of the medical board, or by the superintending surgeon of the division in which the applicant may be located. In like manner, if the applicant shall have proceeded beyond the territories under the government of the East India Company, he must furnish a certificate and statement to the required effect from a surgeon or physician, at the place of his temporary residence, by whom he has been attended; such attendance and the period of it to be stated, and the certificate to be countersigned by the examining physician of the East India Company if the absentee is in Europe, or by the principal medical authority of the colony or country to which the absentee may have proceeded; or some sufficient reason stated for the want of such countersignature if not produced. The officer countersigning must either personally examine the applicant, or state some sufficient reason why he has been unable to do so. When any of the required particulars are neglected, leave will be refused. *Section V.* Leave of absence will be granted under the following limitations to servants who may be declared by a sufficient medical certificate to require leave for the restoration of their health:—

1. The limit to leave on medical certificate is fixed at three years during the entire period of service, of which not more than two years may be continuous and two years only will be permitted to reckon as service qualifying for pension.
2. Leave of absence on medical certificate will not be granted for a longer period than twelve months at any one time, which may however be extended, if necessary, under renewed medical certificate, for periods not exceeding six months, within the limit of two years continuously. After a continuous absence of two years on medical certificate, an interval of two years shall elapse before further leave on that account is granted.
3. During one year of the entire period of absence under this rule, the absentee will be subjected to a deduction of one half, and during the remainder to a deduction of two-thirds of his allowances, provided, however, that he shall in no case draw a larger sum than rupees 6,000 (£600) per annum.
4. In cases of extreme urgency, the heads of offices are authorized to grant leave of absence on medical certificate to the extent of one month, provided the same be immediately reported for the sanction of government. *Section VI.* Leave of absence may be granted for one month in each year, or, to judicial officers, during the authorized closing of the civil

Application for extension of sick leave.

Period of sick leave allowed, viz.

three years of which two only are service;

not more than 12 months at one time, but may be extended.

Salary.

Cases of extreme urgency.

Without deduction from salary.

courts, without deduction from salary. *Section VII.* 1. In addition to the above, and on sufficient cause being shewn, leave of absence may be granted on private affairs for not more than six months, one-half the absentee's salary being deducted for such period of absence, provided the rate of rupees 6,000 (£600) per annum be not exceeded. 2. The leave granted under this section will be computed from the date of the absentee's quitting his post to the date of his return thereto. A second leave of the same description cannot be taken till the expiration of six years from the date of return to duty from a former leave. No portion of the salary allowed to be drawn will be claimable till the absentee shall have returned to his duty. 3. Leave taken under this and the preceding section will reckon as service qualifying for pension. *Section VIII.* In addition to the leave which may be granted under the preceding rules on medical certificate or private affairs government may at any time under special circumstances and at its discretion, grant leave of absence once during the period of service not exceeding twelve months on private affairs, without forfeiture of appointment, but without pay; such period of absence not to count as service towards pensions. *Section IX.* No leave of absence on private affairs shall be claimable by any party whatever under these rules as a matter of right. Such leave will be granted only at the pleasure of the government or its authorized officers when the concession of the indulgence in no way interferes with the interests of the public service, and it shall be the duty of the government in every instance (except in the case of leave granted under section 6) to consider and determine whether the grounds of the application are sufficiently urgent to justify the concession of the leave. *Section X.* Parties who may desire to draw their allowances while absent on leave, will be required to give security in such amount and form, as may be fixed by government, for the refund of any excess that may be drawn in case of their coming under retrenchment. *Section XI.* No person appointed to a situation under the government shall draw the salary of his appointment for any period prior to the date of his joining it. *Section XII.* An officer holding a situation, appointed to one of equal or higher value, will, until he joins, draw so much of the salary of his new office as may be equal to the salary of his former situation; provided he does not exceed the time allowed for joining under the following rules; should he do so, no salary will be passed to him for such period in excess. *Section XIII.* The time ordinarily allowed for joining an appointment is to be calculated at the rate of fifteen miles a day (Sundays excepted) together with a week to prepare for the journey; but on occasions of emergency, it will be optional with the government to prescribe the period within which any journey is to be performed. *Section XIV.* A person officiating temporarily in any situation, will draw so much of the salary of such situation as may equal the sum deducted on account of absence from the real incumbent, and the substantive allowances of every officer temporarily acting in a situation of superior emolument, will be subject to deduction at the same rate; but no additional expense is on any account to be incurred by the absence of any officer on leave. Govt. India, No. 9, February 22; 1856.

On private affairs, with deduction of half salary;

salary not to be drawn till return; time counted as service.

On private affairs without salary;

no service.

No leave on private affairs can be claimed of right.

Security.

Allowances commence on joining appointment.

In case of transfer to another appointment.

Time allowed for joining.

Salary in acting appointment.

Under section 1 of the above rules, the Lieutenant-Governor of Bengal is pleased to authorize heads of offices and departments to grant leave to their subordinates, to whom

OFFICERS WHO HAVE NOT RECEIVED THEIR

**APPOINTMENTS
DIRECT FROM GO-
VERNMENT.**

* *Sudder court, board of revenue, superintendent of marine, director of public instruction, commissioner of police in Calcutta, commissioners of circuit as respects their police jurisdiction.*

those rules are applicable, and who have not received their appointments direct from government, to the extent and on the conditions specified below:—Every head of an office, or department, may grant leave to persons immediately subordinate to him not exceeding one month in the year, under sections 5 and 6 of the rules, reporting that he has done so to the civil auditor. The authorities named in the margin* may grant leave to officers departmentally subordinate to them, for any period not exceeding twelve months under section 5, or six months under section 7 of the rules, reporting that they have done so to the civil auditor and also to government. All other applications for leave must be submitted to government through the regular channels. The attention of heads of offices and departments is specially directed to sections 4, 7 (Clause 2), and 9 of the rules. Govt. Order Bengal, December 6, 1856.

Nazirs

are to appoint their own naibs and peons; and to execute mochulka for their good behaviour.

2527. The nazirs of the several courts of judicature are allowed to appoint their own naibs, and the mirdahs or peons, or any similar descriptions of public servants employed under their immediate direction and control; and to fill up all vacancies, which from time to time occur in such appointments, subject to the approbation of the judges and magistrates superintending the courts to which they are attached. They may also remove the persons so appointed by them, provided they can state sufficient cause to the satisfaction of the judge or magistrate; but not without his previous knowledge and sanction. The nazirs are to enter into a mochulka or penal obligation, in such sum as is required by the courts to which they are attached, for the good behaviour of the naibs, mirdahs, and peons, whom they appoint. *Beng. Reg. XIII. 1793, sect. 2. Ced. Prov. Reg. XII. 1803, sect. 2. Reg. V. 1804, sect. 12.*

Nazirs may receive a commission at one anna in the rupee on the sale of unclaimed property.

2528. The payment of a commission of one anna in the rupee is authorized to be made on the proceeds of the sale, to the nazirs of the foudaree courts, who are ordered to sell unclaimed property, as a remuneration for proper care in the preservation of the property, and for seeing that it is fairly and properly sold at auction, subject to the condition that the duty has been, in each case, performed to the satisfaction of the head of the office. C. O. No. 116 of vol. 3.

English writers

are subject to the same rules as other amils.

2529. The appointment and removal of English writers, natives of India, is to be governed by the above rules. Const. No. 31.

SECTION II

OF LAW OFFICERS.

2530. The law officers of the sudder dewanny adawlut are the law officers of the nizamut adawlut; and the law officers of the civil courts are the law officers of the court of sessions of the same zillah. (a) *Beng. Reg. XII. 1793, sect. 4. Ced. Prov. Reg. XI. 1803, sect. 4.*

Appointment.

2531. The Mahomedan law officers of the sudder dewanny adawlut, and the civil courts, are to make the following solemn declaration in their respective capacities of law officers to the nizamut adawlut, and the courts of sessions: "I, A. B., Mahomedan law officer of the nizamut adawlut (or of the court of sessions of zillah ———), solemnly declare that I will truly and faithfully perform the duties of Mahomedan law officer of the court, according to the best of my knowledge and ability; and that I will not receive, directly or indirectly, any present or nuzzer, either in money or in effects of any kind, from any party in any suit or prosecution to be instituted, or which may be depending, or have been decided in the nizamut adawlut (or sessions court) of which I am law officer; nor will I directly or indirectly derive any advantage or emolument from my office, excepting such as the orders of government do or may authorize." *Beng. Reg. XII. 1793, sect. 6; and Reg. IX. 1793, sects. 37 and 71. Ced. Prov. Reg. XI. 1803, sect. 6; Reg. VII. 1803, sect. 8; and Reg. VIII. 1803, sect. 8.*

Solemn declaration to be made on entering office.

2532. Whenever from the absence of the proper law officer, or other emergency, the services of an officiating law officer are necessary to carry on the duties of the sessions, and there is not sufficient time, without inconvenience, to make a previous reference on the subject to the nizamut adawlut, it is competent to the session judge to employ a duly qualified individual of the Mahomedan persuasion, to officiate as law officer; a special report of such temporary arrangement being immediately made in each instance for the information and orders of the nizamut adawlut. *Reg. IV. 1830, sect. 3.*

Session judge may appoint a person to officiate as law officer in case of emergency.

2533. Persons officiating as law officers under the above provisions, if not holding any other office under government, are entitled to receive the same pay as the Mahomedan law officers of the courts, viz. 100 rupees per mensem, during the time they are employed on the sessions. The judge should charge the pay of the officiating officer in his contingent bill, submitting to the civil auditor the order of government, or of the nizamut adawlut, as his authority for the charge. *C. O. No. 61 of vol. 2.*

Salary of such officiating officer.

2534. The session judge is to report to the nizamut adawlut every instance, in which it appears that the Hindoo or Mahomedan law officers have shown incapacity for their offices, or have been guilty of misconduct in the performance of their duties, or of any acts of profligacy in their private conduct. *Beng. Reg. IX. 1793, sect. 60. Ced. Prov. Reg. VII. 1803, sect. 29.*

Session judge is to report incapacity or misconduct of law officer.

(c) The rules for the nomination, appointment, and removal of law officers belong rather to the department of civil law, and have therefore been excluded from this work.

Magistrate has
no control over law
officer.

2535. A magistrate has no control over the law officer of the sessions court in such capacity; and is not authorized to direct the government pleader to communicate with such officer on a matter relating to a futwa delivered by him in a criminal trial before the sessions. Const. No. 631.

Prohibited from
engaging in trading
speculations.

2536. Native judges of all grades, and law officers, are prohibited, under pain of dismissal from office, from being engaged in any trading speculations. If such speculations devolve upon any such officer by inheritance, he is within one month to make known the circumstance to the judge, or to the register of the sudder dewanny adawlut, and to terminate his connection with such transactions at the earliest practicable period. If he is unable to do so within one year, he is either to resign his situation, or to report the circumstances of the case to the judge or register, who is to forward it to government, or the sudder court, as the confirmation of the officer is vested in one or other of those authorities, with his own opinion as to the propriety of allowing the officer a further period for the purpose of bringing his transactions to a close. Candidates for such offices are to certify in their applications, that they are not engaged in any trading speculation; and if it is subsequently discovered that they were so engaged at the time of making their application, they will be liable to be dismissed. C. O. No. 109 of vol. 3.

Prohibited from
lending money to
persons within their
jurisdiction.

2537. The rule in sect. 2, Reg. XXXVIII. 1793 (*Ced. Prov.* sect. 2, Reg. XIX. 1803) prohibiting public officers from lending money to persons within their jurisdiction, is extended to all uncovenanted judicial officers. This prohibition does not, however, extend to the officers on the ministerial establishments of the several civil and criminal courts, but to those functionaries only, who are legally empowered to exercise judicial functions. C. O. No. 186 *L. P.* and No. 198 *W. P.* of vol. 3.

Prohibited from
holding lands.

2538. Uncovenanted judicial officers, as all other public officers, are prohibited from holding land in any district in which they exercise civil authority. C. O. No. 202 of vol. 3. *L. P.*

Travelling allow-
ance.

2539. The travelling allowance of a law officer on circuit is 2 rupees a day, if his salary exceeds 100, and is not above 200 rupees per mensem. If above 200 rupees per mensem, it should be 3 rupees a day. C. O. No. 106 *W. P.* and No. 120 *L. P.* of vol. 2.

Leave of absence.

2540. Applications of law officers for leave of absence are to be forwarded to the nizamat adawlut by the session judge, with his opinion as to the propriety of compliance with the same. C. O. No. 77 of vol. 3. *L. P.*

Salary during leave.

2541. A deduction of one half of the fixed salary of a law officer is to be made in the event of absence from his station at any other period than the regular vacations. C. O. S. D. A. No. 172, November 26, 1841.

SECTION III.

OF PUBLIC ACCOUNTANTS.

2542. Every public accountant shall give security for the due discharge of the trusts of his office, and for the due account of all moneys which shall come into his possession or control, by reason of his office. Act XII. 1850, sect. 1.

Public accountant to give security.

2543. In default of any Act having special reference to the office of any public accountant, the security given shall be of such amount and kind, real or personal, or both, and with such sureties (regard being had to the nature of the office) as shall be required by any rules made or to be made from time to time, by the authority by which each public accountant is appointed to his office, subject to the approval of the governor or governor in council of the presidency or place. Act XII. 1850, sect. 2.

Amount of security how regulated.

2524. Every person is a public accountant within the meaning of this Act, who, by reason of any office held by him in the service of the East India Company, is entrusted with the receipt, custody, or control, of any moneys or securities for money, or the management of any lands belonging to the East India Company; or, as official assignee or trustee, or as surbarakhar, or in any other official capacity, with the receipt, custody, or control, of any moneys or securities for money, or the management of any lands belonging to any other person or persons. Act XII. 1850, sect. 3.

Who is a public accountant.

2545. The person or persons at the head of the office to which any public accountant belongs may proceed against any such public accountant and his sureties, for any loss or defalcation in his accounts, as if the amount thereof were an arrear of land revenue due to government. Act XII. 1850, sect. 4.

He may be proceeded against for loss or defalcation as for arrear of land revenue ;

2546. All regulations and Acts now or hereafter to be in force for the recovery of arrears of land revenue due to government, and for recovery of damages by any person wrongfully proceeded against for any such arrear, shall apply, with such changes in the forms of procedure as are necessary to make them applicable to the case, to the proceedings against and by such public accountants. Act XII. 1850, sect. 5.

and rules regarding one apply to the other.

2547. All the sales of estates, summarily sold before the passing of this Act, in satisfaction of the security bonds of any public accountants within the meaning of this Act, shall be deemed as good and valid, and be as liable to be reviewed and annulled, as if such estates had been sold under authority of this Act, and no further or otherwise. Act XII. 1850, sect. 6.

Validity of previous sales.

SECTION IV.

OF CHARGES OF CORRUPTION, ETC.

Summary inquiry to be instituted if a native ministerial officer is accused or suspected of embezzlement of money entrusted to him in his official capacity.

2548. Whenever any native officer, attached to a civil or criminal court, is charged with having embezzled any money or other property paid into, or deposited in, the court to which he is attached; or received by him in his official capacity in execution of a decree, or on account of a deposit, or on any other account whatever; or whenever the judge or judges of a civil or criminal court have reason to suspect any such embezzlement, on the part of a native officer attached to the court; they are immediately to institute a summary inquiry to ascertain the truth of such charge or suspicion; and are, at the same time, to require the native officer accused, or suspected, to give sufficient security for his attendance during the inquiry. In the event of such security not being given, and of its appearing necessary to keep the officer in custody pending the inquiry, it is competent to the judge or judges to order the same, and to keep the party in the custody of peons, or to confine him in the civil jail, until he gives the required security, or his detention appears no longer necessary. Reg. XVIII. 1817, sect. 7, cl. 2.

Rules for the recovery of money so embezzled.

2549. When the summary inquiry has been completed, if it is established thereby that any money or other property has been embezzled by the person accused, or suspected, in his official capacity, he is to be required to pay the same into court within such time as is limited for that purpose; and, on his failure to comply with such requisition, it is recoverable from him, as well as from his surety, if he has given security on account of the office held by him, by the usual process of recovery in execution of judgments of the civil courts. Reg. XVIII. 1817, sect. 7, cl. 3.

Salary of officer may be attached.

2550. Any sum of money actually due to a public servant, on account of salary, is liable to attachment in the same manner as other property;—the officer attaching such money is at liberty to call on the disbursing officer to assist him in effecting the attachment; and such disbursing officer is required to give his assistance. Const. No. 827.

But the money or property so embezzled is to be refunded to the party, who deposited it, whether it be recovered from the embezzling officer or not.

2551. Whenever it is established by the above process that any native officer attached to a civil or criminal court has embezzled any money or other property, duly paid into or deposited in the court to which he is attached; or regularly received by him in his official capacity in execution of a decree, or on account of a deposit, or on any other account whatever; it is the duty of the European controlling authority to refund to the party or parties, whose property has been so embezzled, the amount or value of the embezzlement from the public treasury, in the first instance, without reference to the solvency or otherwise of the defaulter or his surety, the government reserving to itself the right of adopting such measures for the recovery of the money so refunded, as is deemed expedient with reference to the nature and circumstances of each case. Reg. III. 1827, sect. 6.

2552. A ministerial officer was convicted of having surreptitiously obtained and corruptly appropriated to his own use money deposited in court. Government applied to the court to realize under the above provisions the amount so misappropriated. But the application was rejected on the ground that the party from whom recovery was sought had not been convicted of embezzlement in the legal acceptance of that term; and that therefore the amount could not be summarily recovered from him under the provisions cited: the remedy for the government was a regular suit. Carrau's Reports, page 66.

A conviction of embezzlement in the legal acceptance of the term, is necessary to recover under these rules.

2553. The government cannot be held responsible, under the above rule, to make good to the owners the loss of property stolen from the malkhana of a magistrate's office; but in cases where neglect or want of care for the prevention of such loss, or the due preservation of the property from such accidents, is proved, the officers in whose custody the goods lost or stolen were placed are to be called upon to make good the value of them. C. O. Sup. Pol. L. P. No. 24 of 1840.

Responsibility when goods are stolen from the magistrate's malkhanah.

2554. The summary decree prescribed above, adjudging the exact sum recoverable, must be passed before the judge can proceed to realize the amount embezzled by a native officer. Const. No. 334.

Summary decree must be passed, before the money is recoverable.

2555. A similar mode of proceeding is to be observed, when a native officer, attached to any civil or criminal court of judicature, withholds any public accounts which it is his duty to prepare and furnish; and the summary judgment in such cases is not only to order the immediate delivery of the accounts withheld, but is also to impose such fine to government as appears just and proper on consideration of all the circumstances of the case, and the situation of the party. Reg. XVIII. 1817, sect. 7, cl. 4.

Similar mode of proceeding, when a native officer withholds any public accounts.

2556. Any person altering or changing any papers in a government office is liable to the punishment of forgery under Reg. II. 1807; and it is no excuse to say that the papers were altered or changed by order of the superior amlah, or the European officer presiding. C. O. No. 57 of vol. 1.

Punishment of native officers altering or changing any official papers.

2557. Though a summary inquiry into cases of embezzlement of the ministerial officers of the judge's court may be conducted by him under the above rules, he cannot commit for that offence, this duty being left to the magistrate, to whom the judge should submit his proceedings if grounds appear for subjecting the accused to a criminal trial; and the magistrate is in such case to use his discretion in committing or releasing the accused, on a fair consideration of the evidence adduced. Const. No. 691.

The above rules do not authorize a judge to commit an officer of his court for such offence.

2558. Whenever the local government, or the head officer of a department or office under government, is of opinion that there are good grounds for making a public enquiry into the truth of any imputation of corruption, extortion, embezzlement, or other malversation, committed at any time during tenure of office by any ministerial or police officer subject to the jurisdiction of the courts of the East India Company, and subordinate to such government, or employed in such department or office as the case may be, it shall be lawful for such government, or any such head officer as aforesaid, to prosecute such officer on the part of government in a criminal court, or to nominate some person to conduct such prosecution. And it is also lawful for such government, or head officer as aforesaid, in their or his discretion, to

Prosecution of any subordinate officer on the part of government upon charge of corruption, &c.

Prosecution may be conducted on the part of govern-

ment, if charge brought by private party.

Not barred by service having ceased.

Prosecution not to be commenced without sanction of board, or other controlling authority.

Trial is illegal without such sanction.

But such sanction is required only for prosecutions on the part of government.

Officer engaged in prosecution, or his assistants, not to act as judge.

Ministerial officers are amenable for corruption to the courts to which they are attached.

Security may be demanded from the person bringing such charge at any time.

The nizamat adawlut may receive charges against the officers of a sessions court, or of the superintendent

undertake on the part of government, the prosecution in a criminal court of any such charge as aforesaid, which may be brought by an aggrieved private party against any such ministerial or police officer; and such prosecutions as aforesaid are not to be barred or affected by reason of the party prosecuted having ceased to be in the service of government at the time at which the charge may be brought against him. Act XXXII. 1852, sect. 1.

2559. Provided always that no collector, magistrate, nor head of an office in the salt, abkarree, or customs department, under the grade of commissioner, is to commence or undertake a prosecution under this Act until he shall have obtained the permission of the court, board, or officer to whom he is immediately subordinate, to institute the same. Act XXXII. 1852, sect. 2.

2560. Where a deputy magistrate committed a police officer on the prosecution of government without the commissioner's sanction, and the judge returned the case with directions that such sanction should be obtained, and the prisoner was afterwards re-committed on such sanction and tried; it was held that the proceedings were regular. Reports *W. P.* 1855, part 2, page 8.

2561. This restriction is intended to apply only to cases in which it may be desired to institute proceedings on the part of government against the native officers referred to. It is not meant to prohibit the magistrates from entertaining *bonâ fide* complaints from individuals, which may be brought forward in regular course against such officers. C. O. No. 60 of vol. 4. *W. P.*

2562. No collector, magistrate, judge, or other officer, who may prosecute any officer under this Act, or cause such prosecution to be instituted, or who may conduct any preliminary investigation into the conduct of such officer connected with such prosecution, nor any of his deputies, assistants, or subordinate officers, is to act as judge in any such prosecution. Act XXXII. 1852, sect. 3.

2563. The ministerial officers are amenable to the courts to which they are attached for acts of corruption or extortion; and the courts are empowered to receive any such charges that are preferred against them. Previous, however, to receiving the charge, the courts are to require the complainant to make oath [or solemn declaration] to the truth of it; and unless the complainant previously takes the oath, or subscribes such declaration, the courts are not to receive the charge. *Beng. Reg.* XIII. 1793, sect. 9, cl. 1. *Ced. Prov. Reg.* XII. 1803, sect. 12, cl. 1.

2564. Security is not to be demanded, in the first instance, for the prosecution of any such charge. But in the event of its appearing necessary at any time in the course of the enquiry, sufficient hazirzaminee security is to be required from the accuser to attend and prosecute the charge to a conclusion. *Reg.* X. 1806, sect 10.

2565. The nizamat adawlut is empowered to receive any charge of corruption or extortion, not relating to any suit or matter depending before them, or decided by them, that is preferred to them against any ministerial officer of a sessions court, or of the court of a superintendent of police, or of a magistrate, and to refer it to the court to which the

accused is attached by a precept under the seal of the court and attested by the register, provided the complainant proves to their satisfaction, that he preferred the charge in the first instance to such court, and offered to make the required oath or declaration, and that the court notwithstanding omitted or refused to receive the charge; and moreover makes the required oath or declaration prescribed above. But if any person prefers a charge of corruption or extortion against any ministerial officer of such court to the nizamut adawlut, in any appeal or matter which is depending, or has been decided, in the two last mentioned courts, the courts are to receive the charge, and to refer it to the court to which the accused is attached without previous enquiry, provided the complainant previously makes the oath or declaration required above. *Beng. Reg. XIII. 1793, sect. 9, cl. 2. Ced. Prov. Reg. XII. 1803, sect. 12, cl. 2.*

of police or of a magistrate.

How to proceed on receiving such charges.

2566. The superintendents of police are empowered to receive any charge of corruption, not relating to any suit or matter depending before them, or decided by them, that is preferred to them against any of the ministerial officers of the magistrates within their respective jurisdictions; and to refer the charge to the magistrate to whose court the accused is attached, provided it is proved to their satisfaction that the accused preferred the charge in the first instance to such magistrate, and offered to make the oath or declaration required, and that the magistrate notwithstanding omitted or refused to receive the charge. But if any person charges a ministerial officer of any magistrate with corruption or extortion in any matter which is depending before or has been decided by the superintendent of police, the charge is to be received, and referred to the magistrate, to whose court the accused is attached, without further enquiry, provided the complainant previously makes the prescribed oath or declaration required above. *Beng. Reg. XIII. 1793, sect. 9, cl. 4. Ced. Prov. Reg. XII. 1803, sect. 12, cl. 4.*

The superintendent of police may receive charges against the ministerial officers of the magistrates.

How to proceed on receiving such charges.

2567. If the nizamut adawlut receive a charge of corruption or extortion against any ministerial officer of a sessions court, or of a superintendent of police, or magistrate, and there appears, upon a consideration of the circumstances of the case, any objection to referring the charge to the court to which the accused is attached, they are empowered, according as they judge expedient, either to cause the charge to be tried by the sudder dewanny adawlut, or, if the charge is against any ministerial officer of a magistrate, to cause it to be tried by the zillah court to which such magistrate is subordinate. *Beng. Reg. XIII. 1793, sect. 9, cl. 5. Ced. Prov. Reg. XII. 1803, sect. 12, cl. 5.*

How the nizamut adawlut is to proceed, if there appears objection to referring the charge to the court to which the accused officer is attached.

2568. If a superintendent of police receives a charge of corruption or extortion against any ministerial officer of a magistrate, and there appears, upon a consideration of the circumstances of the case, any objection to referring the charge to the magistrate to whose court the accused is attached, he may cause it to be tried by the zillah court to which such magistrate is subordinate. *Beng. Reg. XIII. 1793, sect. 9, cl. 6. Ced. Prov. Reg. XII. 1803, sect. 12, cl. 6.*

How the superintendent is to proceed, if there is objection to referring the charge to the magistrate to whose court the accused is attached.

2569. Charges of corruption or extortion preferred against the ministerial officers of any court under this section, are to be considered as civil actions, and are to be prosecuted

Charges of corruption and extortion against mini-

terial officers are civil actions, and to be prosecuted in the civil courts.

in the civil courts. Conformably to this rule, when the nizamat adawlut receives any such charge against their own officers, or exercises the powers vested in them by clause fifth, they are to direct the complainant to prosecute the charge in the sudder dewanny adawlut; and whenever the other courts receive any such charge against any of their own ministerial officers, or the ministerial officers of any subordinate court, or in the event of any such charge being referred to them, they are to direct the complainant to prosecute the charge before the civil court. *Beng. Reg. XIII. 1793, sect. 9, cl. 7. Ced. Prov. Reg. XII. 1803, sect. 12, cl. 7.*

What award may be adjudged by the civil court.

2570. If a native ministerial officer, who is prosecuted for corruption or extortion under this section, is proved to have received or taken the whole or any part of the money or property which he is charged with having received or taken, the court is to adjudge him to refund the amount of the money, or value of the property, which he is proved to have so received or taken, with interest, when it is a case of money taken, at such rate not exceeding 12 per cent. per annum, as to the court appears equitable, and to pay full costs to the plaintiff in the suit. The court is not, in such case, competent to award any fine against the defendant. The courts may suspend a native officer against whom a charge of corruption or extortion is preferred, until the final decision has passed, if they see cause for so doing. *Beng. Reg. XIII. 1793, sect. 9, cl. 8. Ced. Prov. Reg. XII. 1803, sect. 12, cl. 8. Reg. III. 1827, sect. 3.*

The accused officer may be suspended.

If the charge is not proved, the accused may sue the accuser in the civil court.

2571. If any person prefers a charge of corruption or extortion against any ministerial officer under this section, and the charge is not proved, the accused is to have the option of suing the accuser for damages in any civil court to which he is amenable. *Beng. Reg. XIII. 1793, sect. 9, cl. 12. Ced. Prov. Reg. XII. 1803, sect. 12, cl. 12.*

Law officers are subject to the same rules.

2572. The above rules are applicable to charges of corruption or extortion preferred against the Hindoo or Mahomedan law officers of the several courts. *Beng. Reg. XII. 1793, sect. 8, cl. 1. Ced. Prov. Reg. XI. 1803, sect. 8, cl. 1.*

The above rules do not preclude a criminal prosecution for corruption, extortion, or embezzlement.

2573. In explanation of the above provisions for a civil action, it is declared that those provisions, the principal object of which is to enable individuals, who are aggrieved by any of the native officers in question, to obtain redress by an action in the civil courts, are not meant to preclude a criminal prosecution in cases of corruption, extortion, or embezzlement, which appear to call for exemplary punishment. *Reg. XVIII. 1817, sect. 6, cl. 1.*

Any law officer, or ministerial officer, may be prosecuted criminally, whether the civil action has been brought or not, and whatever is its result; punishment in such cases.

2574. Whenever there appear to be sufficient grounds for a criminal prosecution against any law officer, or ministerial native officer, on a charge of corruption, extortion, or embezzlement,—whether the civil action provided for above has been brought or not, and whatever, if brought, has been its result,—he is liable to a criminal prosecution before the magistrate, and sessions court, as provided for in other cases of misdemeanor by the regulations; and, on conviction before the sessions court or nizamat adawlut, he is to be subject to discretionary punishment to the extent, and under the provisions, stated in sect. 3, *Reg. II. 1813,** with respect to native officers convicted of making use of the public money entrusted to their care. *Reg. XVIII. 1817, sect. 6, cl. 2. Reg. III. 1827, sect. 4.*

* *v. para. 2582.*

2575. In such cases the prosecution should be public, and conducted by the vakeel of government. C. O. No. 67 of vol. 1. Const. No. 58.

Prosecution to be by the government vakeel.

2576. Under the above provisions, a magistrate is competent to entertain and investigate a charge of corruption preferred against an officer on the establishment of the commissioner of revenue and circuit. Const. No. 649.

Magistrate may take up charges against officers of commissioner's court.

2577. A special report of the convictions and sentences which take place under the above rule is to be submitted to government for the purpose of determining whether the guilty persons shall be declared incapable of again serving government in any public capacity. Reg. XVIII. 1817, sect. 6, cl. 3.

Special report of such cases to be sent to government.

2578. The magistrate is competent to pass sentence of punishment on a conviction of a native ministerial officer of bribery or corruption to the extent of the powers vested in him by the regulations, when such punishment appears to him, on a consideration of all the circumstances of the case, to be adequate to the degree of criminality of the accused: otherwise, he should commit to the sessions court. Const. No. 237.

Power of magistrate in such cases.

2579. A provincial court, having commenced an inquiry into the conduct of a native officer, were informed that they should complete it; and, if they considered the case to call for exemplary punishment, direct the government pleader to institute a criminal prosecution against the defendant before the magistrate; but that, in the event of their not deeming it necessary to adopt this measure, it would of course be optional with the prosecutor to do so himself, or to seek redress by instituting a suit against the defendant in the civil court. Const. No. 737.

Cases requiring exemplary punishment should be prosecuted criminally. If the court deems this unnecessary, the complainant may prosecute criminally or in the civil court.

2580. It is not necessary for any party, from whom money or property has been corruptly taken or extorted, to institute a civil action for the recovery thereof; but, on proof of the charge in a criminal prosecution for those offences, a certified copy of the conviction by a sessions court, or the nizamut adawlut, is to be received as sufficient authority for enforcing the refund of the amount or value so taken with interest, on application to that effect being preferred by the aggrieved party to the civil court on the stamp paper required for miscellaneous petitions. Reg. III. 1827, sect. 5.

The civil court may enforce the refund of money corruptly taken without civil action, on production of certified copy of conviction in criminal court.

2581. Bribery and corruption on the part of native ministerial officers in the revenue department, are punishable as misdemeanors under the rules laid down in cl. 7, sect. 2. Reg. LIII. 1803.* Const. No. 1002.

Native revenue officer guilty of corruption.

* v. para. 1314.

2582. Giving bribes to the amlah of a public officer for corrupt purposes, is clearly a misdemeanor both according to the English and Mahomedan law; and, though not specifically mentioned in the regulations, the individual committing it is unquestionably liable to a criminal prosecution. Const. No. 522.

Giving bribes to the amlah is a misdemeanor.

2583. Khazanchies, tuhseeldars, and other native officers entrusted with the public money, are strictly prohibited from making use of such money for their own advantage, or that of any other individual. Reg. II. 1813, sect. 2.

Native officers are not to make use of public money entrusted to them.

2584. Any person infringing the rule contained in the foregoing section is to be deemed guilty of a misdemeanor, and is to be punished, on conviction thereof before a

Punishment to which persons in-

bringing this rule
are liable.

sessions court, at the discretion of the said court, under the authority vested in such courts by cl. 7, sect. 2, Reg. LIII. 1803, in cases liable to discretionary punishment: provided, nevertheless, that no person convicted of such offence is to be sentenced by a session judge to the punishment of stripes, or to hard labor. If in any instance imprisonment for the term of 7 years appears to the session judge to be an inadequate punishment for the offence, he is to transmit the trial, with his sentiments thereupon, to the nizamat adawlut for the final sentence of that court.* Reg. II. 1813, sect. 3.

* See section of
breach of trust in
chapter 3 of book 6.

Such cases to be
reported to govern-
ment.

2585. A special report is to be submitted to government respecting all convictions and sentences, which take place under the provisions of this regulation, in order that government may have an opportunity of considering, whether the guilty persons should not also be declared incapable of again serving government in any public capacity. Reg. II. 1813, sect. 4.

These rules are
applicable to native
officers in the com-
mercial depart-
ment.

2586. The above provisions are still applicable to native officers employed in the commercial department entrusted with public money, and are not affected by the provisions of Reg. IX. 1829. Const. No. 903.

CHAPTER VI.

OF JAILS.

SECTION I.

OF THE OFFICE OF INSPECTOR OF JAILS. *L. P.*

2587. The following orders were issued on the institution of the appointment.

Office instituted
for what purpose.

The office of inspector of jails in the lower provinces was instituted for the purpose of assisting, *first*, in introducing into all the jails of the lower provinces a stricter system of classification, management and discipline; *secondly*, in checking all unnecessary expenditure for establishments, food, &c., and in rendering the labour of the convicts as productive and remunerative as possible; and *thirdly*, in employing to the best purpose whatever sums it may, from time to time be determined to expend, either in the construction of *new* prisons, or in the repair or alteration of *old* ones.

2. The first of these possesses a double importance. To the degree in which it may be attained, it will preserve those who are imprisoned for minor crimes from being

corrupted by communication with more hardened offenders; and, by subjecting all to strict restraint, will give the best chance of reformation. It will also have the desirable effect of rendering confinement more an object of dread by the uniform enforcement of labour and the prevention of disallowed indulgences; and it may thus enable the government to diminish hereafter the general terms of imprisonment without impairing the efficiency of the punishment. In all points of view, therefore, both financial and political, whatever improvements the inspector of jails may be able to bring about under this head will be of the greatest value.

3. Few of the existing jails possess facilities for the introduction even of an incomplete classification, or for the profitable employment of all the prisoners within their walls. The attainment of this latter object is considered the first step to a really sound discipline, as that of the former is to any hope of eventual reformation. As regards classification, it

Classification of prisoners.

- * 1. Males under trial for felonious offences,
- 2. Ditto under ditto for misdemeanors (including affrays, assaults and the like.)
- 3. Male prisoners sentenced to imprisonment with labour in irons not redeemable by fine for periods exceeding three years.
- 4. Male prisoners sentenced to ditto for periods not exceeding three years.
- 5. Male prisoners sentenced to imprisonment without labour or with labour redeemable by a fine.
- 6. Women under trial.
- 7. Women convicted.

N. B.—Prisoners convicted of perjury, forgery, or fraud, to be classed with No. 5, unless a separate ward can be assigned to them. Prisoners for life may remain with No. 3, till they can be withdrawn to separate jails.

appears to the government that *at least* seven separate wards should, if possible, be contrived in each criminal jail, in which the prisoners should be distributed as per margin.* It will be incumbent on the inspector to examine the existing accommodation in each case with a view to this object. He will also inquire, with reference to the extent of the space enclosed within the walls, the demand in the neighbourhood for particular

Labor within the jail.

articles, and in the circumstances what number of the prisoners can be employed with advantage within the interior of each jail. Even the present accommodation admits of a large majority of the prisoners in most jails being employed within the walls. The mode in which these are to be employed, the rules which are to be observed regarding them, and the effect of the stricter confinement both on their characters and on their bodily health, will also engage the inspector's attention. As regards the prisoners also, who in some districts must still for the present continue to work on the roads or elsewhere outside the jail, he will strive to introduce such regulations as may appear to him most likely to check any gross abuse of the increased liberty necessarily afforded them.

4. Under the same general head of management will fall the consideration of the manner in which each jail is cleansed, watched, and guarded; of the system pursued regarding the diet and for supplying the other wants of the prisoners; of the treatment of the sick; of the punishment of offences committed within the jail; together with such other points as may seem to the inspector worthy of attention.

Cleanliness of jail.

Diet.
Treatment of sick.
Jail discipline.

5. The second general subject upon which government wish to have the benefit of the inspector's exertions, viz. that of regulating expenditure upon establishments, &c., and of increasing the returns from labour, requires little explanation. Having the accounts of all the jails in the provinces before him, it will not be difficult for him to observe where good management exists, and to enforce the same throughout the general system.

Regulation of expenditure.

Repair, alteration,
or removal of pri-
sons.

6. As regards the third head, the repair, alteration, or removal of prisons, in the first instance the necessity of limiting his views of amelioration to the means which the government possesses is impressed upon the inspector. Undoubtedly one form of building or arrangement of area may be more advantageous than another, and this form should be adopted in all new constructions. But, as regards existing jails, his judgment and ingenuity will rather be exercised in making the best use of the present structures than in devising extensive changes, the expense of which the government is not prepared to incur. If, however, he should anywhere see cause to think that an addition or alteration may be effected at a moderate cost, while it would add much to the security or accommodation of the prison, it will be his duty to propose it in communication with the magistrate for the consideration of government. His attention will be particularly directed to increasing, as far as possible, the security of the jails, so as to obviate the great evil of desperate characters, who have been once apprehended, being again let loose upon society.

Propositions of
local authorities for
alterations, &c., to
be sent through in-
spector.

8. The session judges and the commissioners in the non-regulation provinces will be directed to send up through the inspector's office, all propositions for altering, enlarging, and repairing prisons which they may receive from the magistrates, in order that he may have an opportunity of expressing his opinion on the plan in its first stage. Such propositions should, however, in all practicable cases, be concluded beforehand by the inspector and the local authorities, during his periodical visits to each station. No application for works of the above nature will hereafter be made to the department of public works, without being previously submitted to the inspector.

Insecure jails.

9. There are some jails regarding the utter insecurity or inadequacy of which representations have frequently been made to the government. These will be hereafter brought specially to the inspector's notice, and he will be desired to report separately upon their real state, and the best mode of correcting their deficiencies.

Yearly visit to
each jail.

10. It will be necessary for the due discharge of the duties thus entrusted to the inspector that he should visit each jail at least once in the course of the year, and most of them twice. But this will be required of him at present in respect only of the jails in the regulation provinces, the three northern districts of the South Western frontier agency, Darjeeling, Cachar, and the Cossyah Hills. Arrangements may hereafter be made for the express personal inspection of the jails in the other non-regulation districts where it is at present held by the commissioners. The magistrates and session judges, and the authorities in the non-regulation districts, will be directed to afford the inspector every information on the subjects connected with his appointment, and to pay the greatest attention to his recommendations; and it is confidently expected that he will be able to act in concert with them when introducing his intended reforms.

English corres-
pondence regarding
jails in all offices
to be kept distinct.

11. In order to facilitate his enquiries it will be well that all English correspondence in the offices of the session judges, magistrates, or assistant commissioners, connected with the jails, should be kept in separate books, which, together with all official documents relating to the same subject, will be at all times open to his inspection. A book should

also be kept in each jail in the English and Native languages, in which all orders which may be passed by any competent authority relative to prison management should be entered. This may be termed the "order book of the prison." It will show him whatever changes may have been introduced since his last visit to the place.

12. As soon as practicable after the completion of his first round of visits, he will furnish the government of Bengal, with a report upon each place of confinement, showing its present state and circumstances together with the improvements which he has introduced, or which he would recommend for adoption. His observations should be classed under the three general heads mentioned in the first paragraph of these instructions, subdivided into as many sections as may be required. General remarks may be added as to the sanitary state of the jail, with the supposed cause of any extraordinary sickness; as to its capacity for containing the numbers usually confined in it; its comparative security for the detention of the more desperate classes of convicts; or the like. These reports will be as brief as practicable, and may be furnished separately for each commissioner's division. They will be repeated annually if his appointment remains in force, which will chiefly depend upon the advantages which may appear to result from it. The government also expects from him a complete annual report of his operations, and the results thereof, administrative and financial; the first report to be furnished as soon after the 1st May 1855, as possible.

Report.

13. He will draw up and submit for the approbation of government such forms and statements as he may judge it necessary to require from the magistrates and other officers in charge of jails, in order to put him fully in possession of the points which he is required to ascertain. These should be as few, as concise, and as little differing from existing forms, as is consistent with the object. It will also be well that he should draw up a set of rules for the guidance of magistrates on the more important parts of their duties connected with the jails. He will submit these proposed rules to the government, when he shall have had more experience of the points in the present system which especially require amendment. It is desirable that he should, at the same time, obtain and forward the opinions of some of the most intelligent and experienced magistrates as to their adequacy and expediency. When approved, these rules will be circulated for the information of the criminal authorities.

What forms and statements should be required.

Rules.

14. He was directed to observe that it was not intended by his appointment to alter the existing system, by which the immediate supervision of the jails is vested in the sessions judges and in the commissioners of the non-regulation provinces. All bills for prison expenditure will continue to be countersigned by these officers as heretofore, and he will communicate officially through them with the magistrates. On the other hand the sessions judges will henceforth, except in cases of emergency, (a) correspond with the government in matters relating to jails through his office, so as to give him the opportunity of adding any remarks which he may wish to offer. It will be his province to suggest to the judges,

Immediate supervision of jails still vested in judge.

Judge to correspond with government through the inspector.

(a) Such for instance as the proposed removal of prisoners in consequence of an outbreak of cholera or other epidemic.

magistrates and other authorities, such changes of system or reductions in expenditure as he may consider advisable. If, as is hoped, he can procure their concurrence in his views, no reference to government will be necessary till the subject is mentioned in his annual report. If otherwise, he will refer the points at issue for the orders of government, furnishing, at the same time, a note of the objections urged by the judge to his suggestions.

Inspector's records to be reduced as much as possible.

15. The hon'ble the deputy governor regards it as a matter of serious importance that he should encumber himself as little as possible with records, and engage as sparingly as may be in official correspondence. In all ordinary cases, a reference made by a sessions judge through him to the government can be passed on, with a brief remark endorsed on it; and the orders of government can be passed on it in like manner, a brief memorandum of their date and purport being noted in a book. So all ordinary letters addressed to him can be returned with his order, or reply, briefly endorsed on them; and many other ways will occur to him of shortening the usual official forms, and reducing the bulk of his records to a minimum. It will be impossible for him to carry on the duties of inspection efficiently, if his movements are impeded by the necessity of having to carry about with him a quantity of official papers. He should aim at the collection and condensation of all needful information in books of convenient size, so as to be able to dispense as quickly as possible with loose and bulky documents.

Power to sanction expenditure.

16. The inspector is authorized to sanction any item of expenditure for an object of permanent utility, on the adequate advantage of which he and the local authorities may be agreed, to an amount not exceeding 500 rupees. The magistrate will charge the amount in an extra contingent bill, which will be passed upon the inspector's countersignature. He is also authorized to raise the amount of monthly expenditure now allowed for jail manufactures in any jail in which a larger expenditure may seem to be required. Whenever he may exercise the power thus entrusted to him, a full explanation of the circumstances will be expected in his subsequent report.

Diary of proceedings.

17. The inspector will keep a brief diary of his proceedings, and forward it weekly for the information of government.

Govt. *Bengal*, No. 2344, December 31, 1853.

Control of inspector extended to Assam, Arracan, and South Eastern Frontier agency.

2588. The inspector of jails *L. P.* was directed to inspect personally the jails in Assam, Arracan, and the two Southern districts of the Chota Nagpore agency, and to exercise the same superintendence and control over those jails, as he does over the other prisons in the lower provinces. Govt. *Bengal* No. 641, March 4, 1856.

Police officers to assist his progress.

2589. Police officers are to render the inspector of jails at all times any assistance, that he may require, to facilitate his progress, whenever the course of his public duty may take him into the district. C. O. Govt. *Bengal*, No. 33, March 10, 1856.

SECTION II.

OF THE JAIL AND JAIL DISCIPLINE.

2590. All magistrates are to submit an annual return of prisoners according to the subjoined form, on the 15th of January in each year, showing the sentences of all prisoners in confinement on the last day of the previous year, as required by the Hon'ble the Court of Directors in their despatch dated 23rd October 1844, No. 14.

Form of annual return of prisoners in custody on the 31st December of each year.

Statement showing the sentences of all prisoners confined in the Jail on the 31st December 185 .

Number of prisoners sentenced to							Number of life prisoners.
One year and under.	Two years and above one year.	Three years and above 2 years.	Five years and above 3 years.	Ten years and above 5 years.	Twenty-one years and above ten years.	More than 21 years and not for life	

A. B.

Magistrate.

C. O. Insp. Prisons, *W. P.* No. 54 of 1854.

2591. When periodical returns and statements relating to prisoners in the jail are forwarded to government, the words "jail statement" are to be superscribed on the outside of the cover. C. O. Govt. *Bengal*, No. 3630, Nov. 30, 1855.

"Jail statement" to be superscribed on covers of statements.

2592. It is competent to the governor general, by an order in council, to issue such orders as he may, from time to time, deem necessary, for the introduction of a system of discipline into the jails, calculated both to reform the convicts, and to render their imprisonment efficacious as an example to deter others from the commission of crime. Reg. II. 1834, sect. 7.

System of jail discipline.

2593. So much of the provisions of any Regulation, or Act, as vests the judges of circuit, the commissioners of circuit, the superintendents of police, and the sudder nizamut adawlut, with control and superintendence over jails, the prisoners confined in them, the establishments thereunto belonging, and the places of banishment or transportation of prisoners, is repealed. The whole of such control and superintendence is vested in the

Control of jails vested in magistrate and session judge under the orders of the local government.

magistrates and joint magistrates acting under the instructions of the session judges; and the magistrates, joint magistrates, and judges, are to be guided in regard to all matters relating to the jails under their charge, the prisoners confined in them, the establishments thereunto belonging, and the places of banishment or transportation of prisoners, by such orders as they may receive from the local government. Act XVIII. 1844.

Nizamut adawlut not to be addressed regarding

2594. As the nizamut adawlut has been relieved by the above Act from the duty of supervising the management of jails and all matters therewith connected, the criminal authorities are to address themselves direct to government on all matters indicated in that Act, and are to be guided by such instructions as they receive from government. C. O. Nos. 180 and 191 of vol. 3.

Officer in charge is solely responsible; and is to forward reports.

2595. The magistrates, joint magistrates, or other officers in direct charge of jails, are to be held solely responsible for the management of the same to government. The officers in question are to forward the monthly statements of prisoners, and the half-yearly and annual reports, through the session judges to government, receiving through the session judges from government all orders regarding the internal economy of jails, their discipline, establishments, employment of convict labor, and every thing connected with their general management. C. O. Govt. Bengal, No. 1072, October 10, 1844.

Alipore jail.

2596. The duty of inspecting and supervising the Alipore jail, which by sects. 11 and 12, Reg. XIV. 1816 is vested in the nizamut adawlut, is now transferred to the judge of the 24-Pergunnahs, whose duties in regard to the said jail are the same as those prescribed for session judges generally, as above. C. O. Govt. Bengal, No. 1072, October 10, 1844, para. 10.

Superintendent of police cannot interfere.

2597. A commissioner of circuit is not authorized, either as judge of circuit or as superintendent of police, to issue orders direct to jail officers regarding the management of the jails. But under certain very urgent circumstances in the absence of the magistrate it was held that the commissioner of circuit, who was also superintendent of police, was justified in directly interfering with the management of a criminal jail. Const. Nos. 746 and 909.

Magistrate to visit the jail weekly;

2598. The magistrates are required to visit their jails weekly. And such visits are to be made without previous notice to the officers of the jail, and not at any fixed period of time. Jail rules, sect. 9, paras. 2 and 3.(a)

and judge monthly.

2599. The session judge is to visit the jails monthly, to enquire into their condition and that of their inmates; and to submit to government, when forwarding the periodical statements of the magistrates, or immediately in urgent cases, their own remarks on the condition of the jail for such orders, either in regard to individual cases, or the general conduct of the jail duties, as appear to be required. C. O. Govt. Bengal No. 1072, Oct. 10, 1844.

Jail records and visiting book.

* See para. 476.

2600. Jail records and correspondence are to be kept strictly in the manner prescribed in para. 11 of the order appointing the inspector of jails.* The visiting book is to be ruled

(a) The jail rules are quoted from the compilation printed at the Baptist Mission Press in 1828.

longitudinally in triple columns, containing 1, date of visit; 2, remarks of visitors; 3, orders of magistrates. All orders are to be translated, entered in the order book, and signed by the jail darogah, in proof of their having been seen. C. O. Insp. Jails L. P. No. 39, February 27, 1856.

2601. The rule precluding the admission of armed men into the jail is not intended to apply to persons whom the session judge takes with him on his visits to the jail. C. O. No. 229 of vol. 1.

Judge may take armed men into the jail.

2602. The magistrate is to prescribe a set of written rules for the internal economy of his jail, (a) relating to the articles which may be admitted into the jail for the prisoners, the hours when those articles may be admitted, and the persons who may be permitted to converse with the prisoners; and the jailor and his deputy, as well as the commanding

Certain rules to be prescribed by magistrate.

(a) "In the first place I would mention the plan, which I have adopted, of ticketing the prisoners. Every prisoner is supplied, on his entering the jail, with a wooden ticket, which bears the same number as the warrant (perwana) under which he is sentenced: should two or more prisoners be included in one perwana, each of them bears the same number, with the addition of 1, 2, or 3 as his name may stand in the perwana. His blanket and coat are stamped also with the same number. This not only prevents the thefts and the disputes regarding clothing which used to occur, but induces the convict to preserve it with greater care. This system also facilitates the exact registration of all the prisoners, and the register affords immediate information of their names, their crimes, the date of their sentence and its expiration, and the authority by which the sentence has been passed. Whereas, previously, if the jail darogah had been asked the name, or crime, or sentence of any convict, he would have acknowledged his ignorance, and then proceeded to seek for the required information through his books; and would probably have found a convict of the same name, but the son of another person under another sentence; and after pursuing his search through more pages, the required name would at length have been discovered, and the information given; now, under the ticket system, you ask the man his number, and looking down the margin of the register you immediately discover all the information required.—The prisoners are turned out of their sleeping wards at daylight, and five convicts are allotted to the charge of each burkundaz. As he leaves the jail, the darogah delivers to him a paper ticket, in which are detailed his own name, the names of the five convicts allotted to him, and the date of the month; and at the same time the jailor enters, under its particular heading, the nature of the duty on which they are to be employed. The nature of the labor of convicts working out-side the jail differs every day, and the tickets also are changed every week, as well as the convicts allotted to each burkundaz. Thus are prevented the fulfilment of any previous arrangements between convicts and their friends to meet at particular spots, and the power of selecting particular duties of an easy nature; and a system of more equal distribution among all the convicts of hard and easy labor is in operation, than obtained when the convicts and their burkundazes could arrange among themselves to proceed to chosen employments. These tickets are re-delivered to the darogah on the return of the burkundaz and his assigned convicts in the evening. At the end of the week the original tickets are brought for my signature, which gives me an immediate opportunity of observing, by a glance at their contents, if any favoritism has been shewn in the distribution of labor.—Convicts sentenced to hard labor are thus distributed to their several duties. Previous, however, to leaving the jail, each convict neatly folds up his blanket (this may appear a small matter to mention, but it has been adopted as a measure of economy to obviate the wear and tear of the convict's blanket, which obtained when his lotah, thalee, and other properties were tied up by the four corners, as well as to prevent the concealment of unauthorized acquisitions) and puts it into a recess fixed in a shed erected for this purpose. This shed is lined with racks, on which are marked numbers from one to the corresponding number of prisoners in jail, each recess of the rack being supplied with a wooden ticket corresponding with the number stamped upon the recess. On placing his property in one of these recesses, each convict receives the ticket of that recess in lieu, and proceeds to labor. On his return from labor, he presents that ticket to an officer appointed to the duty, and receives back his own property in the condition in which he left it in the morning.—Prisoners without labor are thus far treated, with the exception of assignment to any particular burkundaz, in the same manner. When I arrived here, they were in the habit of proceeding, on the recommendation of the civil surgeon, to take exercise in one of the alleys, between the inner and outer walls of the jail, but without order and in noisy conversation. I adopted the plan of marching them out of their ward, and of making them take the same quantity of exercise, namely, for two hours in the morning, and one hour in the evening, in single file, and strict silence.—The female convicts have been a subject of some trouble and anxiety. When I joined the district they underwent little labor and had much freedom; they wore jewels and what clothes they pleased; and were shut up in their wards neither day nor night. One had a parrot, another a shamah! But with the assistance of silence and solitary confinement, as the punishment of misconduct, and the adoption of a colored costume, I have subdued in some degree a system of insubordination; and with the exception of stealing ottah, which they are constantly discovered in concealing about every part of their persons, I have few offences among them which require punishment."—

Extract from report of Mr. T. P. Woodcock, Magistrate of Allahabad, circulated by Bengal Govt. March 1st, 1845.

officer of the jail guard, are to be held responsible for the due observance of such rules, or for the immediate report of any breach of them to the magistrate. Jail rules, sect. 9, para. 4.

Rules prescribed by magistrate to be translated and hung up in the jail.

2603. All orders and regulations relating to the interior economy of the jails, the duties of the jailor, his officers, and the military guard, are to be translated into the native languages, and copies made of the same, and hung up on a board, in a conspicuous part of the jail, in the jailor's apartment, and in the guard-room, for general information. Jail rules, sect. 9, para. 30-

Jailor not to delegate his duties without order.

2604. In the absence of the jailor, the magistrate may authorize his naib to perform the duties of that officer; but without the authority of the magistrate the jailor is not to delegate his personal duties to his naib, or to any other person. Jail rules, sect. 9, para. 17.

Weekly inspection of prisoners by the jailor and native doctor.

2605. On Sunday morning the burkundazes will all attend as usual, and be mustered, when the darogah will examine every prisoner, and certify in a book to the following points:—1, that the irons of every prisoner are secure and clean; if not that they have been made so;—2, that every working prisoner in irons has a pair of leather gaiters;—3, that he has his numerical ticket;—4, and his authorized quota of working utensils, clothing, and bedding; and that they are clean and in good order;—5, that his head and face have been shaved. The native doctor is to report that he has examined every prisoner, and has withdrawn every one sick, weak, or wounded with irons, or affected with scurvy, for the purpose of admission into hospital, or placed them in the infirm gang, as the civil surgeon may deem expedient. A list of prisoners who have transgressed the rules, or have been so removed by the native doctor, is to be presented on Monday morning to the magistrate and civil surgeon for orders. C. O. Insp. Prisons, *W. P.* No. 5, July 1, 1847.

Daily reports to be furnished by jailor and native doctor.

2606. The jailor and native doctor are to furnish the magistrate on the opening of the court with daily reports in English (filled up by an English writer from similar statements kept in the vernacular by those officers) of the prisoners in jail and in the hospital in annexed forms (*a* and *b*), with any modifications that may be suggested by experience. C. O. No. 134 of vol. 1.

(a) *Daily report of prisoners in the jail of zillah* , for the month of .

NIZAMUT ADAWLUT.				SESSIONS COURT.				MAGISTRATE.							Total
Date.	Perpetual imprisonment.	Ditto temporary.	Security required.	Referred.	Temporary imprisonment.	Security required.	Mad.	Post-poned.	Temporary imprisonment.	Security required.	Mad.	Committed.	To be tried.	De-wanny prisoners.	

Daily hospital report for the month of

Date.	Patients brought in.	Total.	Died.	Discharged.	Remaining.

2607. All orders for receiving prisoners into the jail, and for their final discharge, are to be signed by the magistrate or his assistant, and addressed to the jailor. Jail rules, sect. 9, para. 6. Orders for receiving and discharging prisoners.

2608. The prisoners, on their being lodged in the wards in the evening, and on their being taken out in the morning, are to be counted over by the jailor or his deputy. Jail rules, sect. 9, para. 7. Prisoners to be counted periodically.

2609. At the time of locking up the prisoners, the working tools used by them are to be carefully collected and counted, and then deposited during the night in a place of safety without the jail. Sufficient search is also to be made, to prevent the concealment of any weapon or implement about the persons of the prisoners or in the jail, whereby the prisoners might injure one another, or be enabled to effect their escape. Jail rules, sect. 9, para. 8. Tools to be collected at night, and search to be made for weapons.

2610. The jailor every morning and evening, at the opening and shutting up of the jail, is to visit personally every part of the jail, and carefully to inspect the windows, walls, doors, and gratings, in order to discover any attempt to cut the iron bars, or to undermine the walls of the jail. Jail rules, sect. 9, para. 9. Jailor to visit every part of the jail, morning and evening.

2611. After the prisoners are locked up for the night, the keys of the wards are to be lodged with the jailor, if present; or if absent, with his deputy. Jail rules, sect. 9, para. 16. Keys of the wards.

2612. In jails with a chappa roof if a light is necessary, it should be placed under the immediate inspection of the sentry; and magistrates should use all practicable precautions, consistent with the health and reasonable comforts of the prisoners under their charge, to prevent the occurrence of fires. C. O. No. 258 of vol. 1. Precautions against fire.

2613. The practice of chaining prisoners at night to a massive iron chain is both objectionable and unnecessary in regularly built jails, and is to be discontinued in all such jails. C. O. Govt. *Bengal*, No. 494, Feb. 26, 1852. Practice of chaining prisoners to a fixed chain prohibited.

2614. The practice of keeping the batten doors and shutters of the wards closed at night is a cruel and useless precaution against escape, whenever the doors and windows are secured with iron grating; and it is therefore prohibited. The prisoners should always have the means of opening or closing the shutters at will, and the latter should be pierced with open work in the upper planking, so as to admit fresh air into the wards, when the shutters are closed, during cold or rainy weather. C. O. Govt. *Bengal*, No. 556, February 25, 1846. Ventilation of wards at night.

2615. As far as it is practicable, and consistent with safe custody, the close confinement of prisoners in their wards at night is to be restricted to those whose cases are under reference to the court of nizamat adawlut; to convicts under sentence of perpetual imprisonment; and to other persons of notorious bad character. A discretion may further be exercised by the magistrate, in the confinement of prisoners whose trials are under reference to the nizamat adawlut, by exempting from the above restriction any prisoners whose close confinement may not appear necessary for their safe custody. C. O. No. 205 of vol. 1. Certain prisoners need not be confined to the wards at night.

2616. In all such cases the magistrate is to adopt such precautions as are necessary for ensuring the primary object of the safe custody of the prisoners. C. O. No. 145 of vol. 1. Precaution to be used in such cases.

2617. A question having arisen as to whether the sepoy of government employed on duty at the jails should be required to guard the prisoners when taken out to ease themselves, Military guards exempted from a certain duty.

the honorable the vice-president in council was pleased to determine, that the sepoy's of the regular battalions should be exempted from the duty above mentioned. C. O. No. 69 of vol. 1.

No buildings to be erected within the jail, and prisoners not to be allowed the use of private dwellings.

2618. No buildings are to be erected within the walls or boundaries of a jail, but such as are authorized by government. No prisoner is to be allowed to possess, or have access to, any private dwelling in the vicinity of the jail; nor are the families of any one of the prisoners to be permitted to erect dwellings nearer to the jail than the magistrate may judge proper. Jail rules, sect. 9, para. 18.

Friends of prisoners not to be admitted.

2619. The wives and other female connections of the prisoners are not to be permitted to enter the jail. Jail rules, sect. 9, para. 20.

Rules for the disposal of the children of convict mothers.

2620. *Rule 1.* In all cases of female convicts who may, at the time of their conviction, have children at the breast, or to whom children may be born whilst in confinement, such children need not be separated from their mothers until they have attained the full age of two years. When a child arrives at two years of age, it must, at once, be removed from the jail. *Rule 2.* No child which has attained the age of two years at the time of conviction of the mother, is, on any consideration, to be permitted to become an inmate of the jail. *Rule 3.* In all the cases above mentioned, the magistrate must cause diligent enquiry to be instituted regarding the relatives and near connections of the convicts, in order that the children may be made over to them during the incarceration of the mother. *Rule 4.* Should the relations of the children be entirely destitute, and unable to support them, or should the magistrate fail to discover any persons sufficiently near of kin to take charge of them, he will select trustworthy persons to whom he will consign them, and see that they are brought up to habits of industry and labour. C. O. Insp. Jails, L. P. No. 53, October 2, 1856.

Prisoners not to keep shops.

2621. No prisoner is to be allowed to keep a shop in the jail, or its vicinity. Jail rules, sect. 9, para. 19.

Engagements to be made with moodies.

2622. The moodies who supply the convicts with food, are to execute an engagement, binding themselves to the performance of such conditions, as the magistrate may consider proper, to prevent frauds and abuses. A copy of this engagement is to be fixed up in the guard-room, and in a conspicuous part of the jail; and the jailor is to see that these conditions are punctually fulfilled, or report to the magistrate any departure from them. The scales, weights, and measures used for articles supplied to the prisoners, are to be regularly inspected by the magistrate, at least once in every quarter, and as much oftener as he may judge proper. Jail rules, sect. 9, para. 21.

Magistrate to examine weights.

Guards for moodies.

2623. A sufficient guard is to be stationed with the moodies at the time of their supplying articles for the prisoners, for the protection of their property. Jail rules, sect. 9, para. 22.

Intoxicating liquors prohibited.

2624. Intoxicating liquors and drugs are expressly prohibited by the circular orders of the nizamat adawlut, under date the 23rd of April 1805, from being admitted into the jail; and the officers of the jail are to be careful to enforce a strict observance of this prohibition. Jail rules, sect. 9, para. 23.

Sale and barter, &c. prohibited.

2625. The prisoners are not to be permitted to give any money, or to give, sell, or exchange any property whatever to any person attached to the jail, or any public officer of whatever denomination. Jail rules, sect. 9, para. 24.

2626. In all cases of suicide among the prisoners in the jail, an inquest is to be held on the body, and an inquiry made into the circumstances of the case, with the view of ascertaining what cause may have led to the commission of the act; and the result of such inquiry is to be regularly reported to the [inspector]. C. O. No. 157 of vol. 1. Prisoners committing suicide.

2627. A register is to be kept of the wards of the jail, in the form annexed, showing the cubic contents of each, and the number of prisoners daily under confinement. It must be carefully kept up, and should be inspected daily by the magistrate. Register of wards.

Lock up register.

Date.	Containing each night.	Capable of containing.	Cubic capacity.	No. of ward.	CIVIL AND CRIMINAL JAIL.												CELLS.	HOSPITAL.	TOTAL.	Total under confinement.	No. of prisoners secured in stocks and chains at night.																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																														
					Prisoners with labor and irons.	Ditto ditto.	Ditto ditto.	Ditto ditto.	Prisoners under examination.	Civil and revenue prisoners.	Prisoners without labor.	Female prisoners.	Prisoners for life.	Ditto ditto.					Male.			Female.	Within the walls of the jail.	In out gangs.	In nazir's guard.																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																										
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C. O. Insp. Prisons, W. P. No. 5, July 1, 1847.

2028. The magistrate is authorized and enjoined, whenever the number of prisoners is greater than can be conveniently accommodated in the proper jail, to hire without previous application to government any suitable buildings which may be procurable, or to accommodate a portion of the prisoners in tents or boats, or to incur such expense as may be necessary to provide in any other manner for the temporary shelter and safe custody of the prisoners. On such occasions, the magistrate is forthwith to report the arrangements he adopts for the information of government, explaining at the same time the cause of any sudden augmentation in the number of prisoners which has rendered such temporary arrangement necessary. C. O. No. 285 of vol. 1. **Over-crowded jail.**
Magistrates how to proceed in such case.

2629. Serious consequences have, in some instances, been experienced from a want of proper attention, on the part of the magistrate, to the crowded state of the jails. A ma- Responsibility of magistrate in such case.

gistrate cannot be justified in crowding together a greater number of prisoners than the place of confinement will conveniently hold. His duty, in regard to prisoners in his charge, is to detain them in custody according to law ; and every pain he inflicts on those persons, beyond that which is required by law, is illegal punishment. C. O. Nos. 114 and 165 of vol. 1 ; and No. 68 of vol. 2.

Session judge may authorize construction of kutchas buildings.

2630. In such case the session judge is at liberty to authorize the construction of kutchas buildings for the custody of the surplus prisoners ; but those only, whose terms of imprisonment do not exceed six months, should be confined in such temporary buildings. A report is to be made to government on every such occasion. C. O. No. 74 of vol. 3.

Outlying gangs.

Rules for the use of pals by, and precautions against fire.

2631. All prisoners removed from jail for the purpose of being employed upon any public work at a distance, which renders their return to the jail at night impracticable, are to be provided with tents or pals made of tat-puttee, unless a building of less inflammable materials can be procured. The number of prisoners in each pal is never to exceed 20. The size of the pals should not be less than 20 feet by 12. The pals are invariably to be pitched parallel to each other at a distance of not less than 4 yards apart, and not in a continuous line. The belchain, which is passed through the rings of the prisoners' fetters, must be of sufficient length to admit of its being continued beyond the pal at each end, so that the padlock, by which it is secured, may be accessible to the guard even though the tent should be on fire. The ridgepole should be supported upon two poles inclined to each other, in lieu of a single upright pole, in order that the whole of the prisoners might leave the tent in a body, without being disconnected with each other, in case of fire. Every pal is to be provided with a lantern, which is on no account to be opened within the tent. The expense is to be defrayed by the local committees, and charged against the work on which the prisoners are employed. C. O. Insp. Prisons, *W. P.* No. 35, April 6, 1853.

Medical inspection of.

2632. Every outlying gang should be visited by the civil surgeon once a month, or by the native doctor once a week, or brought into the station for inspection on the last day of every month. No prisoner should be detained in the hospital of an outlying gang for more than 48 hours. C. O. Insp. Prisons, *W. P.* No. 5, July 1, 1847.

Prisoners sleeping without the jail how to be secured ; precautions against fire.

2633. Every evening at sun-set, the whole of the convicts on the roads, without distinction, are to be secured with a chain passed through the ring of their fetters, and fastened on the outside of the hut or tent with a padlock ; but more than ten, or at the utmost twenty convicts are not to be secured with the same chain. The chain is to be made light, and put through the fetters whilst the prisoners are standing, in such a manner as not to prevent their moving together with facility on an alarm of fire. The hut or tent in which the prisoners are confined at night should also have a convenient number of doors for their speedy removal in the event of fire ; and every precaution should be taken to prevent so serious an accident, especially by using lanterns to inclose any lamps that are kept burning or occasionally lighted during the night. The sentries at each relief are to examine the state of locks and chains, and ascertain that they are not filed or loosened. Jail rules, sect. 9, paras. 33, and 34. C. O. No. 183 of vol. 1.

2634. Separate apartments in the jails are to be allotted for the following descriptions of prisoners* :—

Prisoners under sentence of death.

Prisoners sentenced to confinement by the sessions court or the nizamat adawlut [or by magistrate for heinous offences].

Prisoners committed to take their trial before the sessions court.

Prisoners sentenced to confinement by the magistrate for petty crimes or misdemeanors cognizable by him [*i. e.* under the powers first conferred on magistrates in this regulation].

And as the crimes proved or alleged against the second or third description of prisoners must be of different degrees of atrocity, the magistrates are required to separate those found guilty or accused of heinous crimes from those convicted of or charged with crimes of less magnitude. They are likewise to separate the male from female prisoners, so as to prevent their having any communication with each other; and the rules for keeping apart the several descriptions of the former are applicable also to the latter. The magistrates are further enjoined to endeavour to prevent drunkenness, gaming, and other immoralities, being practised in the jail. *Beng. Reg. IX. 1793, sect. 21. Ced. Prov. Reg. VI. 1803, sect. 21.*

2635. A similar distinction should be observed in the employment on the public roads, or other public works, of prisoners sentenced by the magistrate and of those sentenced by the courts of session. C. O. No. 45 of vol. 1.

2636. The different wards of the jail are to be appropriated, as far as may be practicable, to the particular descriptions of prisoners who are required to be kept separate under the above rules. The different classes of prisoners are on no account to be permitted any intercourse: and the magistrates are required to be particularly careful that persons in confinement for examination be never imprisoned in the same ward with prisoners under sentences of punishment. Jail rules, sect. 9, para. 15.

2637. All prisoners detained in custody for security only, more especially such as are not confined as notorious robbers or on suspicion of robbery, are to be kept, as far as possible, distinct from prisoners convicted of specific offences. C. O. No. 116 of vol. 1.

2638. All prisoners exempted, or declared entitled to exemption from labor on payment of a fine, under cl. 1, sect. 3, Reg. II. 1834, are to be kept separate, as far as practicable, both in and out of the jail, from convicts under sentence of labor in irons; and magistrates, and superintendents of prisoners, and their subordinate officers, are to be careful to prevent all communication between the two classes. Reg. II. 1834, sect. 3, cl. 2.

2639. The object of classification is to keep together, as much as possible, convicts who have been guilty of the more degrading and disgraceful crimes, as distinguished from those whose offences involve a less degree of moral turpitude, or imply no criminal habit, or deliberate indulgence of malignant passions. These two leading classes are to be again subdivided, to the extent attainable, first, into those whose term of imprisonment exceeds

Classification of prisoners.

How to be classified in jail;

* See page 475.

and at work.

No intercourse to be permitted.

Security prisoners to be kept distinct from those convicted.

So, non-laboring from laboring prisoners.

Rules for classification in W. P.

or falls short of a year, and secondly, into the separation of the criminals according to the greater or less enormity of their crimes. The subjoined list points out the mode in which these principles may be applied, wherever practicable.

Class I. *Subdivision 1.* Dacoity; highway robbery; burglary; theft with violence or other aggravating circumstances; theft of children. *Subdivision 2.* Cattle theft; simple theft; receiving stolen goods, except where the parties are notoriously connected with robbers or thieves, in which case they would be placed in subdivision 1; bad livelihood. *Subdivision 3.* Forgery; perjury; breach of trust; rape; adultery. *Sub-division 4.* Malicious maiming, or injury; brutal or aggravated assaults, as in the case of a husband ill-treating his wife upon slight provocation.

Class II. *Sub-division 5.* Culpable homicide; affray with homicide; simple affray; aggravated assault; and generally all grave offences against the peace or person arising out of some fancied point of honor, or prompted by feelings of anger without premeditated malice, such as would require their being ranked with sub-division 4.

Classification is to be regulated on the principle shown in this list; but the magistrate may modify it in special cases, as *e. g.* where persons of notorious bad character are confined for petty offences, and *vice versa*, recording reasons. Outlying gangs must consist of prisoners sentenced to short periods only, and each gang must be composed of prisoners permitted to associate under these rules. C. O. Insp. Prisons, *W. P.* No. 41, February 4, 1854.

Particular attention to be paid to these rules.

2640. The magistrate must at all times pay particular attention to the important object of separating the prisoners as directed above, and the session judge should see that it is observed. C. O. No. 98 of vol. 1.

Cleanliness.
Jail buildings.

2641. The jail should be erected on a high and dry site, the floor to be well raised from the ground, with flues underneath, to keep the wards dry; and the walls of the wards should be lofty. Ventilation is a point of such vital importance, that every measure which can be adopted should be carried into effect; for, in proportion to the purity and airiness of the wards, will be the health of the convicts. There should therefore be ventilators in the upper part of the wall, and spacious iron-barred openings on the ground floors, with an unconfined area on the outside. The privies should be exterior to the walls of the wards; and a corridor or passage should lead from the ward to the privy, with a wooden door at the entrance; and in the side walls of the privy should be open spaces secured with strong iron bars. A quantity of lime should be daily allowed for their purification.^(a) C. O. No. 145 of vol. 3.

Objects to be specially attended to, to keep jails healthy.

2642. Magistrates are at all times to see that accumulations of filth, rubbish, and rank vegetation are at once removed from the jail by convict labour; and that stagnant tanks, jheels, ditches, and garbage in the vicinity of the jail are cleansed or removed. The utmost attention is enjoined to the ventilation of the wards, the state of the privies, the avoidance of over-crowding at night, the cleanliness of the clothes and persons of the prisoners,

(a) C. O. Govt. Bengal, No. 1780, September 24, 1851, recommends the use of cook-room charcoal in cleaning jail privies and drains.

their food and drink, the hours at which their meals are taken, and the nature and amount of the work performed by them. In the event of the actual outbreak of cholera, the prisoners should be at once removed to pals, and encamped in the most healthy spot that can be selected, with reference to their safe custody. All jheels, stagnant pools, and collections of decayed animal or vegetable matters, should not only be avoided, but care should be taken that the camp is not placed on the lee-side of any such place. The most scrupulous care should be exercised in the sanitary arrangements of the camp, and its immediate vicinity. The ends of the tents facing the prevailing winds should be closed at night, and the prisoners should not be exposed to dews or exhalations of any kind, between sunset and sunrise. The walls of the jail-wards should be white-washed, and a portion of the prisoners removed into them as soon as the disease begins to yield. The darogah, and all guards on duty, should be warned to report immediately all cases of sickness that occur; and the prisoners themselves should be enjoined to make known any appearance of diarrhœa at once, as affording them the best chance of not falling victims to the disease. C. O. Insp. Jails *L. P.* No. 30, December 26, 1855.

Management
when cholera is
present.

2643. The military board have authorized the white-washing of jail-wards once in every quarter if necessary, and oftener on emergencies, on a written application to that effect being addressed by the officer in charge of the jail to the executive engineer of the division. The officers having charge of jails will therefore be held responsible for their being kept in pure and cleanly condition; and prisoners should be prevented as far as possible from defiling the walls. C. O. Nos. 167 and 170 of vol. 3. Jail rules, sect. 7, para. 1.

Wards to be
white-washed once
in every quarter, or
oftener. *L. P.*

2644. The floor of every ward, be it stone, brick, plaster, or mud, is to be "leaped" to the thickness of half an inch by the cooks of messes, or prisoners set apart for this duty once a week, a walk being left unleaped of two feet down the centre when the width of the ward is less than 16 feet, and a three feet walk when the ward is more than 16 feet wide. The walls of every hospital and ward should be first carefully scraped and then leaped with fine potter's clay once a week, to the height of six feet. No charge on account of white washing will be authorized without previous sanction. C. O. Insp. Prisons, *W. P.* No. 5, July 1, 1847.

Floors and walls
to be leaped once
a week. *W. P.*

2645. As the most serious consequences may be experienced from want of due attention to cleanliness in the wards, the government will hold any magistrate highly reprehensible, who is inattentive to this important part of his public duty. C. O. No. 107 of vol. 1.

White washing not
allowed *W. P.*

2646. The most advantageous plan for providing means of daily ablution to the prisoners, is that of a good sized tank in the immediate neighbourhood of the jail, but outside the walls. The practice of bathing within the walls in the well from which water is drawn for drinking is open to objection, on account both of its impairing the quality of the water for drinking, and of rendering the inside of the jail wet and dirty. A tank should be dug 120 feet square and 10 feet deep, which would be large enough for the purpose, and would retain water throughout the year. But whenever difficulties still remain for procuring the means of ablution for the prisoners in the vicinity of the jail, it is almost always practicable

Officer in charge
to see that wards
are kept clean.

Daily ablution of
prisoners.

to allow them these means during the interval from labor, which they enjoy in the middle of the day. C. O. No. 161 of vol. 3.

2647. As further connected with the health of the prisoners, the importance of providing means for their more frequent ablutions and greater personal cleanliness is worthy of notice, as exemplified in the salutary effect produced on the health of the Cawnpore convicts from the permission given them to bathe in a tank adjacent to the prison. The attention of the magistrates is directed to this subject. C. O. No. 88 of vol. 3, para. 7.

Wells to be preserved from pollution.

2648. It is the particular duty of the jailor, and deputy jailor, and other officers of the jail, under such rules and orders as are prescribed by the magistrate, to prevent the water in the wells from being polluted. Jail rules, sect. 7, para. 3.

Clothes to be washed.

2649. The linen of the prisoners is to be regularly washed at stated periods. Jail rules, sect. 7, para. 2.

Repairs of buildings.

Inspector may sanction repairs and alterations not exceeding 500 rupees.

2650. Magistrates are competent to undertake all minor work, not requiring skilled labour, in the repairs and alterations of jail buildings, under the immediate sanction of the inspector of jails. Such work is to be executed by them, and not by or through the executive officer. The government has ruled [April 28, 1856] that it is not necessary that "the executive officer should be called on for estimates of any ordinary brick and mortar work, or white-washing, or carpenter's work, or earth-work, required in jails, when the cost of the work does not exceed rupees five hundred, as the magistrate ought to have sufficient information regarding local rates and prices to enable him to test an estimate prepared by the jail darogah, or any other of his subordinates." But a report is to be made to the inspector of jails, whenever skilled assistance is needed in any work of difficulty. Magistrates are also required to report to the executive officer of the division any material alteration in, or any addition to, the jail buildings, so as to give that officer an opportunity of inspecting the work while in progress. And on the completion of such work they are strictly required to report the same to the executive officer, in order that the necessary entry may be made in the books of the department of public works. C. O. Insp. Jails, *L. P.* No. 42, May 9, 1856; and No. 5, June 21, 1854.

Report to be made to executive officer.

Convict labour always to be preferred to free labour when available in jails.

2651. In all cases of repairs, alterations, or improvements in jails, convict labour when available is to be preferred to free labour. In estimates submitted for works, a small column is always to be given, showing the cost of the work with free and with convict labour. When the employment of convicts is deemed impracticable, the magistrate is to state his reasons for so thinking at the foot of the estimate. C. O. Insp. Jails, *L. P.* No. 16, November 8, 1854.

Delays in works in progress in jails to be reported to inspector.

2652. Special reports of works in progress in jails are to be made to the inspector by magistrates, where there appears to be any unnecessary delay in carrying out the work entrusted to an executive officer. C. O. Insp. Jails, *L. P.* No. 13, September 2, 1854.

Charges.

Authority to incur.

2653. Officers in charge of jails are competent to incur charges for the following items without the previous sanction of the inspector:—

Clothing, half-yearly.

Blankets, annually.

White-washing, quarterly.

Contingent guard over working prisoners.

Prison rations and cooking pots.

Hospital and extra diet.

Ditto bazar medicines.

Oil for jail.

Iron and charcoal for making or mending tools and fetters.

Baskets.

Brooms.

Ropes.

Dhoona.

Sajimati.

Khâr.

{ These articles are the only expense allowed for washing, which is to be done by the prisoners.

Gumlahs for privies.

Mats or tât-pât for bedding.

{ The former once in six months, or the latter once in the year.

Shaving expenses by contract.

If there are no barbers among the prisoners.

Leather mozahs.

Funeral expenses.

All minor work, such as extra white-washing &c., is to be done by them under the sanction of the inspector, instead of through the executive engineer. In carrying out such works it is necessary only to engage a competent rajmistry, if there should not be one amongst the prisoners. No repairs or alterations, coloring, or painting, are to be done to jail buildings, by the officer in charge, or the executive engineer, without the previous sanction of the inspector. Propositions for additions and alterations to jail buildings are to be decided upon between the inspector and the local authorities on each jail being visited; and as he is required, if possible, to visit every jail at least once a year, there is no necessity for the magistrate to send in propositions for trifling additions at any other time. It is, however, to be distinctly understood that whenever such propositions for additions, alterations, petty repairs, &c., are sanctioned by the inspector during visitation or in writing, it will still be necessary for the officer in charge of the jail to submit an estimate for sanction in the annexed form.(a)

(a) Estimate of the probable expense of making _____
in the _____ Jail.

		With hired labor.			With Convict labor.		
10,000	1 Wall 40 × 6 × 1½	20	0	0	16	0	0
20 Mds.	Bricks at 2 rupees per 1,000,	10	0	0	6	0	0
10 "	Chunam at 50 rupees per 100 maunds,	1	0	0	0	12	0
100 "	Soorkie at 12 rupees per 100 maunds,	12	8	0	0	0	0
10	Coolies at 2 annas each } in case convicts are available, {	5	0	0	0	0	0
10	Mistries at 8 annas each } in case convicts are not avail- {	0	0	0	12	8	0
100	Coolies at 2 annas each } able, {	0	0	0	5	0	0
10	Mistries at 8 annas each }						
Total,...							

N. B.—The labor of prisoners must not be charged for; and in case of materials being supplied from the manufacturing department care should be taken that the sum charged for them is exactly that at which they sell in the bazar. When the labor of prisoners is not available that fact should be noted at the foot of the estimate.

It must be remembered that prison labor is to be employed in all cases when practicable. When works, undertaken under sanction obtained as above indicated, have been completed, a bill is to be submitted to the inspector for audit. The civil auditor and accountant will not pass accounts without such audit. C. O. Insp. Jails, *L. P.* No. 41, April 30, 1856; No. 8, July 26, 1854; and No. 14, September 9, 1854.

Sanction of government, if requisite, must be obtained before hand.

2654. If the proposed charge should be greater than the inspector is authorized to pass, the sanction of government must be obtained before the charge is incurred. C. O. Insp. Prisons, *W. P.* No. 19, January, 1849.

SECTION III.

OF MEDICAL MANAGEMENT AND HOSPITAL.

Civil surgeon to inspect weekly and report

2655. The civil surgeon is to inspect once a week, at uncertain intervals by day or night, all the jail wards, cells, and yards, grain, and food; informing himself of the number of occupants of each ward or cell; and is to report on the reverse of the monthly casualty statement to the following effect:—

No. and date of Civil Surgeon's inspection of jail wards and prisoners.			General health of the prisoners.	Quality and quantity of the food supplied.	State of the jail with regard to cleanliness, crowding, and ventilation.
Date of inspection.	No. of prisoners.				
	Inspected.	Withdrawn.			

appending such remarks as he may deem necessary; removing such prisoners as may require his aid to the hospital or infirm gang; and immediately culling the attention of the magistrate, either by letter or in the order book of the jail, to any irregularity that may have come directly or indirectly to his notice. C. O. Insp. Prisons *W. P.* No. 5, July, 1847.

Duties of the medical officer.

Duties on appointment.

2656. *Rule 1.* The duty of the medical officer in charge of a jail embraces the consideration of every matter connected with the health of the prisoners, their treatment in hospital when sick, the regulation of their diet, clothing, work, and punishments, so far as they are concerned in the maintenance of their health; and in general every thing connected with the hygiene of the jail and its inmates. In all these matters he acts in immediate subordination to the magistrate or other officer in charge of the jail. *Rule 2.* The medical

officer, on being appointed, is to make himself thoroughly acquainted with the regulations of the prison to which he is attached, and its various details. *Rule 3.* He is to visit every part of the prison once at least in every week, and oftener in times of great sickness, or when epidemic disease exists in the district or station; and is to enter in his journal the result of such inspection, recording any want of cleanliness, drainage, warmth, or ventilation, any bad quality of the provisions, any insufficiency of clothing or bedding, or any other cause which may effect the health of the prisoners. He is to ascertain that the water is pure and wholesome, and that there is an abundant supply for drinking, cooking, and washing. He is especially to note all defects of drains, privies, and the conservancy arrangements generally of the jail. He is twice each week to see every prisoner whether criminal, civil, or awaiting trial. The result of all his examinations is always to be recorded in an easy form for reference and inspection. *Rule 4.* He is to keep a journal in which he will enter the date of every visit with any observations connected with the performance of his duty. This journal is to be kept in the jail for the information of the magistrate and the inspector of jails. After each visit of the surgeon it is to be sent to the magistrate for the immediate issue of such orders as that officer may find it necessary to pass. *Rule 5.* The surgeon is personally to examine every prisoner on the day of his arrival at the jail, or at latest on the following morning. He is to record in a special register in the printed form appended, the name, age, state of health on admission, weight, and any disease of importance to which he may have been subject, of every prisoner. He is likewise to indicate his opinion as to the class of labor, on which the prisoner may be employed with special reference to his state of health on admission. He is also to record the prisoner's state of health and his weight on discharge; or, in the event of his death, to state the date of his decease, and the disease of which he died, with the number in the record of fatal cases, in which detailed particulars regarding his death may be found. The number of every prisoner in this register is to correspond with his jail number; so as, in the case of all fatal cases, to render it easy to trace the history, crime, and all particulars connected with the deceased, which it may become necessary to know, or refer to, for statistical or other purposes. *Rule 6.* The civil surgeon is at all seasons of the year, as soon after sun-rise as possible, to see all the prisoners who are sick or in hospital. He is also to examine all prisoners who complain of illness; admit those who require it to hospital; and, in the case of those who merely need the application of simple dressings, as in abrasions from fetters or other external treatment, such as does not render it necessary to send them to hospital, to enter in a special out-patient register such variation of the diet or work of the out-patient prisoners as he may consider it necessary to recommend. These recommendations are to be carried into immediate effect by the jail darogah, the register being daily submitted to the magistrate for his information and orders. When great sickness prevails, or the severity of cases actually under treatment requires it, the surgeon is to visit the jail as many times daily as may be necessary for the due and efficient performance of his duties. *Rule 7.* He is daily to visit the prisoners in separate, or solitary confinement. *Rule 8.* He is to keep a regular hospital case book, in which is to be entered day by day an account of the state of every sick prisoner, the name of his disease, and description of the medicines and diet and any other treatment which he may order for such prisoner. It is not necessary to

Visits to the jail.

Journal

To examine every prisoner on admission and discharge.

Daily to visit the hospital and the sick.

Daily to visit prisoners in solitary confinement.
To make daily record respecting sick prisoners.

keep detailed records of trifling cases ; but the leading particulars connected with all severe and fatal examples of disease should invariably be recorded. *Rule 9.* An abstract register shall be kept of all fatal cases of disease, in which shall be entered, 1, the name ; 2, age ; 3, caste or religion ; 4, profession or occupation ; 5, pergunnah and zillah ; 6, crime ; 7, sentence ; 8, date of confinement ; 9, date of decease ; 10, work on which employed at the time of last illness, whether out-door, in-door, or as jail-servant ; or, if non-laboring, whether civil, criminal, or in hajut ; 11, disease, with a brief abstract of its leading characters ; 12, treatment, also in brief abstract ; 13, post mortem examination, which must be made in every case ; 14, remarks by medical officer, should he deem it necessary to offer any on the general or particular characters, causes, or other circumstances connected with the particular case, or class of cases in the event of their being due to epidemic causes. The headings from 1 to 10 inclusive should be filled in by the jail mohurir, from the prison-register ; and the remainder supplied by the medical officer himself. When severe epidemics prevail, and the fatal cases are so numerous as to render it impracticable to keep detailed records, a few typical and well-marked cases should be selected by the medical officer for record and post mortem examination, in order that the general and specific characters of the visitation may be known and recorded. A copy of this register is to be sent every month to the inspector of jails, with a transmitting letter containing any remarks the medical officer may wish to offer. The number of each case in this register is to be recorded in the appropriate column of the general admission register of the jail as required by rule 5. *Rule 10.* He is to keep a special record of all cases of cholera, whether sporadic or epidemic, according to the form of register supplied. A copy of this is, at the end of every month, to be transmitted to the inspector of jails. *Rule 11.* His attention is to be directed to the scale of diet on which each prisoner is placed, and he has a discretionary power to recommend the increase, diminution, or change of the food, when required by the constitution and the state of health of any particular prisoner. He has the same discretionary power with reference to the diet of prisoners in the extremes of youth and old age. It is a rule that diet is not to be made an instrument of punishment, such as can tend to the injury of health ; but this is not to prevent the magistrate from putting a refractory prisoner on reduced allowance, or a coarser kind of diet, where the civil surgeon does not object to it. The civil surgeon is daily at his morning visit to examine the food provided for the prisoners in order to see that it is of proper quality and properly cooked. *Rule 12.* He is to give directions in writing for separating prisoners having infectious complaints, or being suspected thereof ; for cleansing, disinfecting, and whitewashing any wards or cells occupied by such prisoners ; and for washing, disinfecting, or destroying, any infected apparel or bedding. *Rule 13.* He is to examine every prisoner about to be removed to any other place of confinement, and report as to his being free from malignant, contagious, infectious, or other disqualifying distemper, and in a fit state to be removed. *Rule 14.* No prisoner is to be discharged from prison if laboring under any acute or dangerous disease ; nor until, in the opinion of the medical officer, such discharge be safe, unless such prisoner shall require to be discharged. *Rule 15.* No prisoner is to undergo corporal punishment, except in cases of great emergency, until he is examined by the surgeon and certified by him to be in a fit state to

Special record of fatal cases.

Special cholera register.

May increase, diminish, or change diet in particular cases.

To give directions in case of infection.

To examine prisoners previous to removal.

Sick prisoners when to be discharged.

Sanction of surgeon necessary for corporal punishment.

receive such punishment. *Rule 16.* Within one week after the termination of each month, the civil surgeon is to submit to the magistrate, for his countersignature and remarks and immediate transmission to the inspector of jails, a complete monthly return of the sickness and mortality in the jail under his charge. Magistrates are required to report every instance, in which this rule is not strictly complied with. These returns are to be drawn up in the form now required for the annual report submitted to the medical board (which will be forwarded as usual to that authority, through the prescribed channel), and are to embrace every circumstance of interest or importance connected with the jail during the month. The annual return is to be an abstract of the monthly reports. A fair copy of all such reports is to form part of the regular records of the jail. *Rule 17.* The annual returns of sickness and mortality in jails will be printed by the inspector of jails and appended to his general report. C. O. Insp. Jails, L. P. No. 59, January 6, 1857.

**Periodical re-
turns of sickness
and mortality.**

Annual returns
will be printed by
the inspector of
jails.

2657. With reference to the above rules for the medical management of jails, the following forms are required to be kept, with a view to secure uniformity and accuracy with the least possible trouble to medical officers. *Number 1(a)* is the surgeon's special register of persons on admission and discharge. This requires little explanation; yet it is an important record, as by it alone can be determined the extent to which the jails are responsible for deterioration of health, and mortality among prisoners. There can be no doubt that many prisoners, and particularly those who are convicted in times of want and famine, whose crimes are the result of poverty and starvation, or who are drunken, depraved, or addicted to narcotics, take into the jail the seeds of the diseases to which they rapidly fall victims in confinement. For this the prison is in very many instances only partially responsible, and in some not responsible at all. At present such cases are entirely unaccounted for in the returns. The register of the weight of a convict on admission and discharge is important in regard to the sufficiency or otherwise of the prison dietary, and to the influence of labour, solitary confinement, and other points connected with prison discipline upon the general health of prisoners, respecting all of which, up to the present time, the jail records of the lower provinces furnish no information whatever. The previous diseases of a prisoner can in general only be imperfectly ascertained from natives, yet a knowledge of them is not without interest in determining the most judicious and humane means of disposing of them in captivity. It is also of importance in ascertaining the causes of the tendency of particular classes of convicts

Surgeon's register of prisoners on admission and discharge.

(a) *Surgeon's register of prisoners on admission to* _____ *and discharge from the jail of* _____

[illegible]

**Mortality state-
ment.**

[illegible]

No.	Sex and Age.	Zillah.	Sentence; laboring or non-laboring.	Symptoms and course of disease.	Treatment.	Results.	Remarks.

	Case Number.
	Duration of severe symptoms.
	Collapse.
	Reaction.
	Death in
	Mucous Membrane.
	Small Intestines.
	Large Intestines.
	Solitary.
	A aggregate.
	Mesenteric Glands
	Spleen.
	Liver.
	Gall bladder and ducts.
	Peritoneum.
	Kidneys and Urinary passages.
	Female sexual organs.
	Heart and Blood.
	Lungs.
	Membranes.
	Brain Substance.
	Ventricles.
	Remarks.

are the cholera registers, the former of all cases that occur, the latter of the result of fatal cases only. Cholera is so frequent a scourge of the jails in the lower provinces, and there are still so many disputed points in its pathology, as to render it desirable to collect accurate and trustworthy records, especially in public institutions, where the means of carefully observing the whole progress and characters of the disease exist. The following extracts from the circular issued by the board of health in London during the epidemic of 1854, will show the direction in which enquiry should be made, and the points on which further information is required:—

Cholera registers.

1. "*Through what channel* does the exterior cause or poison of cholera first enter or affect the human body? is it through the lungs? or through the stomach and intestines? or otherwise?

2. *Has the disease a period of incubation?* if so, how long? and on what is it contingent?

3. *Is there conclusive evidence, affirmative or negative, as to communication of the disease from person to person?* Has any disproportionate liability to the disease been suffered by those in attendance on the sick, or by those engaged about their dead bodies, or occupied in cleansing their linen? Have cases of the disease occurred where personal infection was impossible? Have solitary cases arisen in large establishments, or been brought thither, without any diarrhoea or cholera ensuing among other inmates? Where choleraic disease has spread in an establishment, shortly after the arrival either of a choleraic patient or of some person from a choleraic locality, has the establishment previously been free from diarrhoea or fever, and unexceptionable in its sanitary arrangements?

4. Does any thing indicate *a communication of the disease by provisions* supplied from houses in which cholera exists?

5. Have persons engaged in *particular manufactures*, or other employments, appeared to enjoy any special exemption from the disease?

6. Has the disease been observed in *apparent dependance on particular articles of diet?* Has any immunity been enjoyed by persons deriving their water-supply from a different source to that generally supplying their district? Has it occurred to persons, who have drunk no other water than such as had previously been distilled, boiled, or filtered through charcoal?

7. Does cholera *begin as a morbid process of the gastro-intestinal mucous membrane?* or is this preceded by some state of general poisoning which requires the gastro-intestinal membrane to act as an emunctory? Is the state of collapse determined by this gastro-intestinal flux, and in proportion to it? or can it arise independently of any such flux? How are the lividity and the cramps determined and proportioned?

8. What conditions determine the occurrence, duration, and severity of *consecutive fever?* What are the varieties of morbid condition included under this term? To what extent does it depend on the previous occurrence of profuse discharges, or on the completeness of collapse? Does stupor in this stage always depend on uræmia, or on what? In what proportion of cases and under what pathological conditions, is the fever accompanied by exanthem?

9. When *diarrhoea and cholera* prevail together epidemically in a district, are they (with differences of degree) *the same disease?* Does the diarrhoea, if left to itself, generally and safely tend to spontaneous recovery? or do such cases, without medical treatment, frequently, in proportion to their numbers, pass into true cholera? Is there any way to discriminate a premonitory diarrhoea?

10. What changes, physical and chemical, are undergone by *the blood in cholera?* Does the consecutive fever represent, in regard to the blood, a period in which this fluid is tending to recover from injuries inflicted on its constitution during the stage of gastro-intestinal flux? Or is it attended by any process of change in the blood, leading to critical discharges or inflammations?

11. Does any *obstruction of the capillary circulation* in the malpighian tufts of the kidney, or in the lung or brain, or elsewhere, arise either from inspissation or other physical affection of the blood in cholera? Do any infiltrations or other parenchymatous changes, which have been observed in persons dead from cholera, arise in consequence of such obstructions? Or do all these structural lesions arise as ordinary inflammatory processes?

Directions for enquiry in cases of cholera, and points on which information is required.

Cholera, . . .

3. *Without Collapse*.—Alvine discharges watery, colourless, with white flakes (rice water). Vomiting commonly urgent. Cramps of extremities frequent and severe. Eyes somewhat sunken. Temperature of surface lowered. Pulse small and feeble. Urine not secreted.
4. *With Collapse*.—Surface of face and extremities quite cold, often wet. Face and hands much shrunken, and more or less deeply livid. Cramps present. Pulse at wrist absent or scarcely to be felt. Veins of extremities contracted to dark threads. Urine not secreted. Voice usually much altered and feeble.
5. *Consecutive Fever*.—Temperature of surface more or less restored. Pulse distinct, sometimes full and throbbing. Veins more or less filled. Face less shrunken, or even full and deeply flushed. Drowsiness passing into stupor. Alvine discharges again containing bile. Urine, in most cases, still suppressed.

Instruction II. Absence of Stages.—The absence of any one or more of the earlier stages should be indicated by the word "*absent*" or "*abs.*" written opposite the deficient stage in the place of the date of commencement. The fact of the disease not reaching the later stages will be sufficiently shown by the mode of termination of the case, ("*death*") or ("*recovery*") being written opposite the stage at which the disease ceased.

Instruction III. Dates.—When the time of commencement of a particular stage cannot be ascertained, the words “not known” or “n. k.” should be written in the place of the date. But although the precise hour of the commencement of each stage cannot be determined exactly, except in rare instances, it may generally be stated approximately by taking some intermediate time between a known period when the symptoms of the particular stage were entirely absent, and one in which they were clearly developed.

Instruction IV. Recovery.—The date of recovery should be fixed at the time when all the symptoms of the disease, and all marked disturbances of health directly resulting from it, have disappeared, although some degree of debility may remain.

Instruction V. *Treatment*.—The nature of the treatment should be indicated in the table as concisely as possible. When any uniform and definite plan of treatment is adopted in a series of cases, that plan should be accurately described in the space for "*Remarks*" and should be indicated on the table by one or two words, as "*Salines*" "*Calomel c. op*" "*Stimulants*" "*Sulph. Ac.*" &c.

Instruction VI.—If any patient at the time of the attack was already suffering from another disease, the nature of that disease and the treatment used for it should be mentioned in the "Remarks."

Number 5(c) is the monthly general return of sick in the jail hospital, and in all out-lying gangs, as well as lock-ups. This return is to be transmitted within one week of the close of each month, except in cases where the out-station lock-up is at a great

Monthly general return of sick in hospital, outlying gangs, and lock-ups.

(e) *Monthly return of sick prisoners in the Jail Hospital at _____, under the charge of _____, with the sick of all out station lock-ups attached to the jail.*

Number of prisoners of all classes in custody on last day of preceding month,...

Total number of admissions of prisoners of all classes during the month,

Daily average strength of ditto ditto ditto,

Ditto ditto of sick to strength,
--------------------------------------	-----	-----	-----	-----	-----	-----

	1906	1907	1908	1909	1910	1911	1912
Average of deaths to strength,

Average of deaths to treated,
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[illegible]

usual manner. Whenever the mortality is in excess of one per cent. of the whole strength, it is to be specially accounted for under the head of '*Medical History of the month*,'* which is likewise to include a brief account of any epidemics which may have visited the jail during that time, and any remarks or suggestions which the civil surgeon may desire to make re-

* At the close of the monthly return given below.

DISEASES.	Remained.	Admitted.	Total.	Discharged cured.	Transferred.	Liberated.	Died.	Remaining.	Total.	Remarks.
Brought forward,										
4.										
42 Laryngitis,										
43 Quinsey,										
44 Bronchitis,										
45 Pleurisy,										
46 Pneumonia,										
47 Hydrothorax,										
48 Asthma,										
49 Phthisis,										
50 Lungs, &c., diseases of										
5.										
51 Pericarditis,										
52 Aneurism,										
53 Heart, &c., diseases of... ..										
6.										
54 Teething,										
55 Gastritis,										
56 Enteritis,										
57 Peritonitis,										
58 Tabes mesenterica,										
59 Worms,										
60 Ascites,										
61 Ulceration,										
62 Hernia,										
63 Colic or Ileus,										
64 Intussusception,										
65 Stricture,										
66 Hæmatemesia,										
67 Stomach, &c., diseases of										
68 Pancreas, diseases of										
69 Hepatitis,										
70 Jaundice,										
71 Liver, diseases of										
72 Spleen, diseases of... ..										
7.										
73 Nephritis,										
74 Ischuria,										
75 Diabetes,										
76 Cystitis,										
77 Stone,										
78 Stricture,										
79 Kidneys, &c., diseases of										
8.										
80 Child-birth,										
81 Paramenia,										
82 Ovarian dropsy,										
83 Organs of generation. diseases of										
9.										
84 Arthritis,										
85 Rheumatism,										
86 Joints, &c., diseases of										

garding ventilation, draining, clothing, food, labour, over-crowding, and internal economy generally of the prison, so far as they concern, or come under his observation as affecting, the health of the prisoners. When epidemics prevail, a brief abstract of the results of the meteorological records kept during the month should also be appended to the return. The list of diseases is taken from the form of return adopted by the registrar general in England, and is promulgated in its complete form to get rid of the unsatisfactory and indefinite class of *other diseases*. Many of the affections mentioned are of rare occurrence in jails, and others may probably not occur at all;—in such cases the corresponding columns should be left entirely blank. It is hoped that care will be exercised in the accurate diagnosis of jail diseases. At present most examples of phthisis and fatal cases of wasting from tuberculous cachexia, are returned as diarrhoea, this being the most prominent symptom preceding dissolution. Again, the ulceration of the cornea which occurs in the advanced stage of general debility and wasting from innutrition, is seldom recorded in the proper place. The detailed calculations of the sickness and mortality of the year will be made in the office of the inspector of jails.—The only annual statement required from medical officers will be a brief narrative of the results of the year in all matters relative to jail hygiene. C. O. Insp. Jails, *L. P.* No. 63, March 20, 1857.

DISEASES.	Remained.	Admitted.	Total.	Discharged cured.	Transferred.	Liberated.	Died.	Remaining.	Total.	Remarks.
Brought forward,										
10.										
87 Carbuncle,										
88 Phlegmon.										
89 Ulcer,										
90 Fistula,										
91 Skin, &c., diseases of										
92 Intemperance,										
93 Starvation,										
94 Violent deaths,										
CAUSES NOT SPECIFIED.										
95 Contusions,										
96 Wounds,										
97 Fractures,										
98 Dislocations,										
99 Concussio cerebri,										
100 Burns and scalds,										
Total,										

185 . f

A. B.
Civil Surgeon.

N. B. The following are the chief points, on which information is required in this portion of the record. 1. Health of Prisoners. 2. Food and Clothing. 3. Cleanliness and ventilation. 4. Drainage. 5. Over-crowding. 6. Labour as affecting health. 7. Use of interdicted articles. 8. A detailed history of epidemics. 9. Causes of mortality above 1 per cent. of strength. 10. Any general remarks or recommendations the surgeon may wish to offer.

2658. To sum up briefly the written statements required from medical officers in connection with their professional duties in jails, they are as follows :—

List of written statements required from medical officers under the foregoing rules.

1. Brief notes in the jail visiting book of all inspections of prisoners' food, &c.
2. The register of the health and weight of prisoners on admission and discharge.
3. The hospital case book, in which only serious and fatal cases need be entered, and those not in great or cumbrous detail.
4. The casualty record.
5. The cholera registers.
6. The monthly return of sickness and mortality.
7. An annual narrative of the medical history of the jail during the year.

C. O. Insp. Jails, *L. P.* No. 63, March 20, 1857.

2659. In the event of any convict complaining of sores or sickness, he is to be sent to the hospital, and put on the sick list, if really indisposed. Jail rules, sect. 7, para. 7.

Sick prisoners to be sent to hospital.

2660. In the weekly inspection of the jail made by the surgeon of the station, he is to be careful to see that all prisoners who are actually sick, and require medical attendance, are removed immediately to the infirmary. Jail rules, sect. 7, para. 4.

Surgeon to see that they are removed.

2661. The native doctor is to reside in the vicinity of the jail. Jail rules, sect. 7, para. 5.

Native doctor.

2662. A sufficient number of charpoys, or beds, of the common construction, are to be provided for the accommodation of the sick confined in the infirmary. Jail rules, sect. 7, para. 6.

Beds to be provided for hospital.

2663. Whenever the surgeon or native doctor may judge it necessary to take off a prisoner's fetters, in consequence of sores or illness, information is to be given to the jailor, and the fetters are to be taken off in his presence. The jailor is also to report the circumstances of the case to the magistrate. Jail rules, sect. 7, para. 8.

Fetters may be taken off in hospital.

2664. The practice of admitting indiscriminately into the jail hospitals parties other than prisoners, and not connected with any foudarce case, is very objectionable, from the possibility of their introducing diseases of an infectious character into the jails, and it should therefore be discontinued at once. The charity hospital is the proper place for all such parties; and where there are establishments of this character, the magistrate is to see that no sick persons other than prisoners are admitted, on any account, into the jail hospital. The above remark has equal reference to wounded men; but there is no objection to their receiving out-door relief. However in cases of parties with severe wounds, insanes not accused of any offence, and parties sent in by the police for examination, where in-door treatment is essentially necessary, they may be received; but every caution must be taken to see that they are not suffering from infectious diseases, and they should be kept as separate and distinct as possible from the sick prisoners. The subsistence and other expenses incurred for parties thus admitted must be charged in the magistrate's contingent bill, and not included in the jail accounts, for they have no connection whatever with the jail. C. O. Insp. Jails, *L. P.* No. 18, November 21, 1855.

No other than prisoners are to be admitted into jail hospitals.

Exceptions to the above rule.

Expenses incurred for parties admitted under the above exceptions must not be included in the jail accounts.

Jail hospital to be separated from civil station charges for native medicines &c.

2665. The charges incurred on account of jail hospital contingencies are to be separated from the sums disbursed in the purchase of native medicines and other articles for the use of the civil station at large. It is desirable to ascertain the expenditure, which with proper economy will suffice for the maintenance of the jail, and this can only be done by excluding from the accounts all extraneous items of charge, and instituting at annual periods a comparison between receipts and disbursements. Magistrates are directed to be very careful to check any departures from this rule. Diet and native medicines for wounded men sent to hospital, are to be charged in separate bills, and not mixed up with the jail hospital accounts. C. O. Insp. Jails, *L. P.* No. 6, July 8, 1854.

Rules regarding hospital charges.

2666. The civil surgeon will be able to afford all information, so far as regards the expenditure on account of bazar medicines &c., from his own contingent bills; but it is necessary that a separate account should be kept of the expenditure of European medicines, &c., received from the Company's dispensary, in the same way as is done in all government charitable dispensaries; and a list, showing the actual quantity expended of each article during the foregoing year, is to be prepared and forwarded through the superintending surgeon to the medical board on the 1st of January, for the purpose of being priced by the apothecary to the East India Company. When received back from that officer, this list duly priced will be immediately returned to the superintending surgeon for transmission to the civil surgeon, who will embody it in the statement of hospital charges, which it will be his duty to furnish to the magistrate or other officer in charge of the jail. As great accuracy is necessary in the filling up of this column of hospital charges, civil surgeons are instructed to separate the actual expenditure of European medicines, &c., in the jail hospitals under their charge from that which takes place on other accounts, as the list required to be forwarded henceforth on the 1st of January of every year is to exhibit the actual expenditure on account of sick prisoners only. In preparing this list civil surgeons ought not to experience any difficulty, as the hospital diaries and other records of expenditure, which they are required to keep by the regulations of the service, must comprise the necessary data. C. O. Insp. Jails, *L. P.* No. 17, November 16, 1854.

And bazar medicines.

2667. Bazar medicines required for the sick in jails are to be supplied by the native doctor. The bill for these articles will be prepared in one of the native languages; and the European medical officer after hearing it read and making any retrenchments that may appear necessary is to write across the face of it, "passed for rupees annas pies," and is to attach his signature. The bill so passed is afterwards to be submitted to the revision of the magistrate by whom it will ultimately be paid if considered unobjectionable. Medical Code, chap. 5, para. 15. C. O. Insp. Jails, *L. P.* No. 17, November 16, 1854.

Convicts to be removed in cases of endemic cholera.

2668. When endemic cholera breaks out in the jail, the whole or a portion of the convicts are to be removed to a healthy spot in the district; which was found very beneficial in one instance when its attacks were very fatal in the insane hospital at Moorshe-dabad. C. O. No. 320 of vol. 1; and No. 145 of vol. 3. See para. 2642.

Prisoners sick in sub-divisions.

2669. Whenever convenient modes of transport are available, and it appears proper to forward prisoners at the head-quarters of sub-divisions to the sudder stations for medical

treatment in serious cases, the officers in charge are to make the necessary arrangements for carriage and escort. Prisoners whose sentences expire, whilst under treatment at the sudder hospitals, are to have the option of being immediately released or of remaining in hospital till cured.—Civil surgeons are to supply officers in charge of sub-divisions with cholera medicines and simple directions for using them. Resolution Govt. *Bengal*, May 20, 1846.

2670. The civil surgeons are required to transmit quarterly to the medical board statements of the sick and of casualties, for such instructions as that board may see fit to issue to them, or for such report to government as circumstances appear to require: magistrates are to give every assistance to the surgeons. C. O. No. 132 of vol. 1.

Quarterly report of surgeon to medical board.

2671. Magistrates are to give the assistance of the writers and mohurirs on their establishments to the surgeons, to enable them to prepare the periodical reports required of them on the state of the hospitals and jail. C. O. No. 138 of vol. 1.

Magistrate's writers to assist in preparing it.

2672. Whenever the mortality in the jail during any one month exceeds one per cent., the magistrate is to require the medical officer in charge of the jail to put on record, in the column of remarks of the monthly statement, his explanation of the cause of the excess, adding his own comments thereon; and, in cases of very extraordinary mortality, he is to make a special report on the subject, for transmission to government through the session judge, who is to append his own observations on the subject. C. O. No. 187 of vol. 2; and No. 98 of vol. 3, magistrate's rules, para. 67.

Explanation required when mortality exceeds one per cent.

2673. Magistrates are directed in all cases to report at once to the inspector of jails, all increase of sickness to strength, and of deaths to sickness, in their respective jails. The causes of the increased sickness and mortality, with the measures adopted to remove or mitigate them, are also to be brought to his notice without delay. C. O. Insp. Jails *L. P.* No. 51, September 20, 1856.

Increase of sickness and mortality to be reported to inspector.

2674. The corpses of all Hindoo prisoners, if not claimed by their friends, are to be thoroughly burnt; and are not to be thrown half-burnt into rivers or tanks. Such quantity of wood, as may be necessary for the purpose of consuming a corpse, is to be supplied by the contractor, on the application of the jail darogah; and the latter will be held responsible that it is used for the purpose intended. Wood thus expended will be entered in the jail contingent bill as one of the items of disbursement, which the officers in charge of jails can incur without previous sanction. The corpses of Mussulman prisoners, if not claimed by their friends, are to be decently buried by prisoners of their own religion; and the officer in charge of the jail may supply, if necessary, a piece of new cloth for wrapping round the body. This cloth will be charged in the jail contingent bill in the same way as is directed above regarding the wood. These orders are to be strictly carried out; and are not to be allowed to fall into disuse. C. O. Insp. Jails *L. P.* No. 19, January 9, 1855.

Rules regarding the disposal of the corpses of prisoners.

SECTION IV.

OF DIET AND CLOTHING.

**Diet, Lower
Provinces.**

Rations to be
given dry.
Two cooked meals.

Quality of food
and care of it.

Supply of water.

Intermediate
meals.

Money.

Musters of pro-
visions

Formation of
messes.

Persons exempt-
ed from messing.

2675. (*Rule I.*) Every prisoner in the criminal jail is to be provided daily with dry or uncooked rations, and no money is to be paid to the prisoners on any account whatever. One cooked meal is to be supplied before and after labor, during the day, and in quantity and variety agreeably to the annexed table. The quality of the food is to be under unre-mitted supervision. Its preservation by the convict cooks is to be well attended to, and care taken that each individual receives his due share. Water if not at hand and pro-curable of good quality from wells, tanks, or rivers, should be brought by convicts, in gurrals or earthen vessels, from the nearest spot where good water is procurable, to enable the working prisoners to quench their thirst with wholesome drink during the day. Pri-soners are to be permitted to take with them the whole or any remaining portion of the morning's cooked meal, and to eat it when inclined during the period of labor. Raw or parched grain is prohibited.(a) (V.) Money is not on any account to be carried into the jail.(b) (VI.) No bartering on any account is to be allowed. The prisoners are to be allowed only what is laid down in the subjoined form. (VII.) The medical officer of the station is to approve of the musters of the provisions. The musters are to be sealed up in bottles or jars, and the contract to be reduced to writing. (VIII.) All the prisoners in the criminal jail, those under examination or committed to the sessions only excepted, are to be formed into messes. (IX.) Each mess is to consist of 20 men as the standard number, and one cook to be allowed for that number. [This number must vary according to circumstances, such as the sufficiency or otherwise of a number of men of the same caste to form a mess of 20, or other cause. The rule is not intended to be imperative, but to serve as a guide to the magistrate in distributing the prisoners into messes. In the formation of messes, the prisoners sentenced to labor should be kept separate from those sentenced to simple imprisonment. As the labor of the cooks does not equal that of the other convicts, well behaved convicts might be employed as cooks; and a selection should be made from the convicts sentenced to labor for cooking the food of the convicts sen-tenced to simple imprisonment; and such cooks should mess with the prisoners for whom they cook.] (X.) Lists of any prisoners of the classes that ought to mess, but who for any special cause are exempted from messing, are to be submitted quarterly to govern-

(a) In the opinion of the medical board, the midday tiffin of parched grain, formerly allowed, invited the accession of the very ailments which have caused the greatest mortality among the prisoners. C. O. No. 143 of vol. 3.

(b) "Money affords the prisoners the daily enjoyment of marketing, which would be a great alleviation of the punishment of any class of men, but peculiarly agreeable to the Indian character. As this enjoyment has no good moral effect upon the prisoner, and tends to make the penalty of his crime less efficacious than it ought to be, the indulgence appears in this view an unmixed evil." *Report of the prison discipline committee, page 31.* It would be to no purpose to prevent marketing with money, if it were allowed to market with barter. C. O. No. 28 of vol. 3, para. 4.

TABLE of a prisoner's daily rations. C. O. Govt. Bengal, No. 38, November 24, 1851.

NON-LABORING CONVICTS.

MORNING MEAL.							EVENING MEAL.								
Rice.	Dall.	Vegeta- bles.	Mustard oil.	Salt.	Mussalah per diem.	Total of each.	Rice.	Dall.	Vegeta- bles.	Fish or Flesh.	Mustard oil.	Salt.	Mussalah per diem.	Total of each.	Grand total, daily food.
Chittacks.	Chittack.	Chittack.	Chittack.	Chittack.	Chittack.	Chittacks.	Chittacks.	Chittacks.	Chittack.	Chittack.	Chittack.	Chittack.	Chittack.	Chittacks	Chittacks.
5	1	0	$\frac{1}{2}$	$\frac{1}{2}$	$\frac{1}{2}$	6 $\frac{1}{2}$	6	2	1	0	$\frac{1}{2}$	$\frac{1}{2}$	$\frac{1}{2}$	9 $\frac{1}{2}$	15 $\frac{1}{2}$

one Daily*

WORKING CONVICTS.

WORKING CONVICTS.

MORNING MEAL.						EVENING MEAL.								
Rice.	Dall.	Vegeta- bles.	Mustard oil.	Salt.	Total of each.	Rice.	Dall.	Vegeta- bles.	Fish or Flesh.	Mustard oil.	Salt.	Mussalah per diem.	Total of each.	Grand total, daily food.
Chittacks.	Chittack.	Chittack	Chittack.	Chittack.	Chittacks	Chittacks.	Chittacks.	Chittacks.	Chittacks.	Chittack.	Chittack.	Chittack.	Chittacks.	Chittacks.
5	1	0	$\frac{1}{2}$	$\frac{1}{2}$	6 $\frac{1}{2}$	7	0	2	2	$\frac{1}{2}$	$\frac{1}{2}$	$\frac{1}{2}$	11 $\frac{1}{2}$	17 $\frac{1}{2}$
5	1	0	$\frac{1}{2}$	$\frac{1}{2}$	6 $\frac{1}{2}$	7	2	2	0	$\frac{1}{2}$	$\frac{1}{2}$	$\frac{1}{2}$	11 $\frac{1}{2}$	17 $\frac{1}{2}$

* One and a half seer of firewood or 1 $\frac{1}{2}$ seer to be allowed as may be found requisite.

+ The above change on alternate days of the week, except on Sundays, when the labouring convicts will receive the same as the non-laboring. Up-country prisoners should be allowed wheat flour instead of rice.

Diet of prisoners in hospital. The sick are to be divided into 3 classes. 1. Those who are to receive full non-laboring rations. 2. Those who are to receive half-rations. 3. Those who are to receive none. The first class consists of those who are in hospital for sore legs, or other complaints that do not affect their general health. The second includes those who are too well to consume the full allowance, or who may have part of their diet supplied by the civil surgeon, and charged in his monthly contingent bill. The third consists of all those who receive their whole diet from the civil surgeon. Firewood is given to all alike. The native doctor is to furnish a memorandum of the number of each class to the jail darogah early every morning, in order that the proper quantities may be made over to the hospital cooks. The civil surgeon is requested to check these memoranda frequently to see if they are correct. The table for second class prisoners is as follows:—

MORNING MEAL.						EVENING MEAL.						
Rice.	Dall.	Vegetables.	Oil.	Salt.	Mussalah.	Rice.	Dall.	Vegetables.	Oil.	Salt.	Mussalah.	Wood.
Chittacks.	Chittack.	Chittack.	Chittack.	Chittack.	Chittack.	Chittacks.	Chittack.	Chittack.	Chittack.	Chittack.	Chittack.	Seer.
2½	½	0	½	½	½	3	1	1	½	½	½	1

C. O. Government Bengal, No. 120, January 9, 1852.

. O. Government Bengal, No. 120, January 9, 1852.

ment with a column for remarks, in which the cause of exemption is to be briefly stated. [Exemption from messing should not be allowed for every trivial cause. The rule is that

* *r. infra, para*
2678

Employment of
mess cooks.

messes be formed, and the exceptions are to be as few as possible.*] (XI.) In the morning when the prisoners go to work, the mess cooks are to be employed in drawing water, cleaning the wards, washing the cooking utensils, receiving the rations from the contractor and making the necessary preparations for cooking: after this the cooks are to be employed in weeding in the jail. [This rule points out the mode of employing the cooks, who are not to be sent out with the working gangs. It is probable that objections on the score of caste may be occasionally made by the cooks to cleaning the wards of the jail. These will of course meet with proper attention from the magistrates.] (XII.) The magistrates

Cooking pots.

* *C. O. No. 97*
vol. 3.

Surgeon's visits.

are to provide iron degchies or cooking pots, to be proportioned to the size of the messes.* (XIII.) The surgeon of the station is to see the prisoners at a meal at least once a week, his visits to be at irregular intervals and unannounced. (XIV.) A public register is to be kept by the surgeon of his visits, in which are to be entered any remarks he may consider necessary regarding the dieting of the prisoners. It is the duty of the session judge to see that this register is regularly kept up. (XV.) Contractors are to be allowed to build store-houses

Contractors and
contracts.

for their grain on any government ground near the jail, and provided the contract is duly performed for one year by the individual erecting the same, one half of the cost of the store-house is to be defrayed by government. [The contract system for providing the food at a fixed rate all the year round should be had recourse to where it is practicable. The contract should be made with due regard to economy on the one hand, so as to protect the government against unnecessary expense, and on the other to the health of the prisoner, so as to ensure for him the full allowance fixed by government for his daily ration.] (XVI.) In addition to the standard ration, one pice [per week] is to be allowed for each prisoner for washing and shaving. (XVII.) All washing and shaving to be performed by contract.† [The foregoing rules are to be considered applicable in their full extent to the male convicts only. The magistrate may enforce them as far as he is able in regard to female convicts also; but the small number of female prisoners in most of the jails will, in many instances, render the application of them impracticable]. C. O. Nos. 89 and 145 of vol. 3.

Washing and
shaving.

† *But see para.*
2653

Rice must be one
year old.

2676. Rice less than one year old is not to be served out to the prisoners. C. O. Insp. Jails *L. P.* No. 21, March 26, 1855.

Contracts to be
sanctioned by in-
spector.

2677. Every officer in charge of a jail is to submit his proposed rates of contract for the sanction of the inspector of jails. Govt. Order *Bengal* in C. O. Insp. Jails *L. P.* No. 57, Nove

Certain classes
exempted from
messing.

2678. Prisoners under examination, and prisoners sentenced to simple imprisonment without labor, as well as those who exempt themselves from labor by payment of a fine under Reg. II. 1834, are exempted from the ration and messing system; and are to receive a money allowance as formerly. C. O. Govt. *Bengal* No. 861, April 1, 1846; and No. 2359, November 30, 1846.

2679. In future all representations for the grant of special indulgences to prisoners for the sake of their health, are in the first instance to be addressed to the inspector, for such remarks as he may consider necessary to make before transmitting them to higher authority. The only exception to this rule must be in urgent cases when he is absent on circuit in districts more distant from the officer making the reference than the seat of government. In such cases magistrates are authorized to address the government directly. C. O. Insp. Jails L. P. No. 43, May 12, 1856.

Applications for special indulgences.

2680. The treasurer is not to be allowed to derive any profits from the exchange into pice of rupees disbursed for the diet allowance of prisoners. The pice, at whatever rate they are procurable, are to be charged for at the actual rate at which they are purchased. C. O. No. 270 of vol. 1.

Exchange of rupees into pice.

2681. The annexed diet table is in use in the Western Provinces.

Diet, Western Provinces.

No. of Class.	Denomination and class of prisoners.	Daily Allowance.					Twice a Week.		
		Atta.	Dal.	Salt.	Pepper.	Wood.	Vegetables in lieu of dal.	Oil in lieu of ghee.	
1.	Prisoners under sentence of labor, ...	Chs. 10, or of rice 8.	Chs. 2.	$\frac{3}{8}$ of a tola or 67½ grs.	1 head per day or 36 grs.	6 to 8 chs.	4 Chs.*	$\frac{1}{4}$ tola.	* Or 5 seers of vegetables and 1 chittack of oil for 20 prisoners; both articles to be cooked together.
2.	Prisoners under examination, non-laboring women and boys under 15 yrs.,	8 or 7 of rice.	2 do.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	8 chittacks of fuel to each prisoner cooking singly, and 6 chittacks to every member of a mess, or 7½ seers to every mess of 20.
	Hospital diet to consist of four rates,	$\left. \begin{array}{l} 10 \\ 8 \\ 6 \\ 4 \end{array} \right\}$	$\left. \begin{array}{l} 2 \\ 2 \\ 2 \\ 2 \end{array} \right\}$	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Rice or other grain may be substituted at the discretion of civil surgeon and magistrate. The several kinds of dal, arhar and mung, to be supplied every alternate week. Red wheat to be supplied sound and free from insects.

Diet table.

The atta to be carefully ground, and freed from bran in the proportion of $1\frac{1}{2}$ seer in every 40 seers of atta : 5 seers of barley may be added to every 35 seers of wheat. With due economy the diet of a prisoner should not cost more than 6 pie per day, though this must of course vary in some degree with the price of food.

Atta.

Cost of diet.

The civil surgeon may adopt any one or more of the 4 fixed rates of hospital dietary ; or prescribe extra items of hospital diet, furnishing the jailor every morning with a memorandum of the total quantity of rations required. Rations will not be drawn for prisoners receiving extra diet.

Hospital dietary.

Two chittacks of chabena may be allowed to each laboring prisoner, when recommended by the civil surgeon. The parched grain is to be served out to the prisoners before they commence work in the morning, and it is left to their option to eat it then or afterwards.

Chabena.

No deviation from this scale is permitted, unless the civil surgeon states that the lives of the prisoners would be endangered by the delay in making a reference, in which case

Deviation from scale, when allowed.

immediate effect is to be given to his requisition, and a report made. C. O. Insp. Prisons *W. P.* No. 5, July 1, 1847 ; and No. 33, June 28, 1852.

Atta to be mixed
with water before
distributing offi-
cer.

2682. In order to secure properly-ground food to all and every prisoner alike, the cooks should mix and knead the ration of atta with water in the presence of the distributing officer, so as to prevent any sifting of the finer from the coarser parts of the meal. C. O. Insp. Prisons *W. P.* No. 5, July 1, 1847.

Grinding wheat
within the jail.

2683. The plan of purchasing the wheat needed for consumption through a trusty agent, and having it ground inside the jail by the prisoners themselves, is a valuable means of providing good nutritious diet in the place of adulterated food, and thus conducing to the improved health of the prisoners. But it must be borne in mind that trustworthy superintendence, and the unrelaxed personal exertions and scrutiny of the magisterial and medical authorities, are essential conditions of its success. C. O. No. 88 of vol. 3, para. 5.

What cooking
utensils are allow-
ed.

2684. Each mess of 20 prisoners is allowed one iron or wooden parat two feet broad, one batlohee of six seers weight, one tawa of two seers weight, and one iron karchul. These should be marked with the number of the mess. A prisoner not included in any mess should be allowed one batlohee, one thalee, one lota, one katora, and one tawa. C. O. Insp. Prisons *W. P.* No. 5, July 1, 1847.

Shaving.

2685. As a general practice it is desirable that every criminal prisoner who is sentenced to imprisonment with labor, should, on final confirmation of the sentence, or expiration of the period of appeal without an appeal being preferred, have his head and face close shaved, and be subsequently shaved once every 15 days, by prisoners set apart for this duty. The Hindu will retain the sikha. The beard and moustaches of all prisoners will be close trimmed. But magistrates are authorized to exempt from this rule those prisoners to whom they think that such a proceeding would be justly offensive or degrading. Seikhs in the jails of Umballa, Loodiana, and Ferozepore are exempted from this rule, and must be similarly exempted wherever they may be imprisoned. It must be carefully borne in mind, however, that the rule is not, in any case, to be made the means of unnecessarily harrassing respectable men who may be imprisoned under sentences liable to be reversed on appeal. C. O. Insp. Prisons *W. P.* No. 5, July 1, 1847. C. O. Insp. Jails *L. P.* No. 52, October 2, 1856.

Tobacco.
Prohibited to
prisoners.

2686. It has been proved by a mass of positive testimony that the views of the most eminent modern medical authorities upon the subject of the use of tobacco are correct—that it is a mere luxury ; that its employment is not necessary for the performance of any natural function ; and that it may, in a vast majority of cases, be abandoned at any time without detriment to health. Stringent measures are to be adopted to prevent the surreptitious use of tobacco, especially among out-door laboring prisoners. Whenever it is detected, the guards in charge of the prisoners, upon whom it is found, or who have been caught in the act of smoking or chewing tobacco, are to be punished, as it is impossible for the prisoners to procure forbidden luxuries without connivance or neglect of duty on the part of the said guards ; and the prisoners who are proved by sufficient evidence to have obtained tobacco are likewise to be subject to the proper penalty for a breach of jail discipline. Hajut prisoners

are not to be exempted from the general prohibition against the use of tobacco. This order is not intended to interfere in any way with the power now possessed by medical officers of prescribing tobacco in hospital to such patients as may appear really to require it. It is hoped, however, that this power will be exercised with the greatest care and judgment, that the hospital may not become the resort of malingerers, and of those who are desirous of escaping the proper penalties of their crimes. C. O. Insp. Prisons *W. P.* No. 32, June 24, 1852. C. O. Insp. Jails *L. P.* No. 44, May 15, 1856.

2687. The blankets or other clothes annually allowed to the prisoners, are to be served out at stated periods, and an account rendered of the old ones: care also is to be taken that the prisoners do not sell or dispose of them in any way. Jail rules, sect. 9, para. 25.

Clothing.
Annual allowance of clothing.

2688. Arrangements are always to be made to distribute warm clothing on the 1st October of each year, as blankets can be purchased cheaper then than in the cold weather, and the probable number that will be required can be calculated as early as in July. C. O. Insp. Jails *L. P.* No. 7, July 18, 1854. Each prisoner is allowed one blanket in summer, and two in winter, one of the two being new. C. O. Insp. Jails *L. P.* No. 22, April 26, 1855.

Warm clothing
L. P.

2689. All prisoners in confinement during the cold season are to be furnished with blankets; but prisoners confined for short periods, when discharged, are to be required to give them up. The returned blankets, unless rendered unfit for use, are to be re-issued to other prisoners in similar predicament. C. O. No. 207 of vol. 2; and No. 93 of vol. 3. *W. P.*

Blanket;—to be
returned if good.

2690. Every female prisoner is to be supplied twice in the year with twelve yards of cotton cloth, and every male with eight yards, and one yard to serve as a gumcha. To those sentenced for less than six months, the magistrate is to issue only such quantity as he may consider necessary. All persons convicted of felony to wear prison clothing. Misdemeanants are to be allowed their own clothing. Old clothing is to be taken away when new is issued; if very dirty, it should be destroyed; otherwise it should be made into massals, basket-pads, paper, or appropriated to any other use the magistrate may think proper. Cloth made in jails is to be charged at its bazar price; and care is to be taken that the darogahs do not charge an advanced rate for it to enhance their own commission. C. O. Insp. Jails *L. P.* No. 2, May 26, 1854, and No. 28, November 15, 1855. This clothing is to be distributed on the 1st June, and 1st December. C. O. Govt. *Bengal*, No. 1342, July 20, 1853.

Cotton clothing
L. P.

2691. Each prisoner is to be allowed a piece of sacking for his bed 8 feet long by 2½ wide. This length will allow of one end being turned over to form a pillow; and strings should be attached to the other end, by means of which the prisoners will be able, when they rise in the morning, to tie up the bedding in a neatly rolled bundle. C. O. Insp. Jails *L. P.* No. 22, April 26, and No. 26, June 15, 1855.

Bedding *L. P.*

2692. All prisoners who are confined within the walls of the jail (as distinguished from those who are still permitted to work beyond its precincts) are to wear a distinctive

Color of dress
to be worn by prisoners
W. P. distinguishing crimes.

uniform dress, varying in its color according to the class of offenders to which the convict belongs. The following colors are to be adopted to mark the several classes of prisoners:

No.	CRIMES.	COLOR.
1st Class.—	Dacoity, burglary, highway-robbery, child stealing, giving poison, and theft with wounding,	Black.
2nd Ditto.—	Cattle stealing, theft, possessing stolen property knowingly, bad-livelihood,	
3rd Ditto.—	Forgery, counterfeiting base coin, perjury, breach of custom laws, fraud, &c. &c.,	Red.
4th Ditto.—	Assault with wounding, simple assault, abusive language,	White.
5th Ditto.—	Culpable homicide, affray with ditto, simple ditto, aggravated assault, and trespass,	Garoo or light Red.

Convicts working on the roads beyond the jail are for the present to continue to wear the yellow uniform which is generally recognized throughout the country as the prison dress. C. O. Insp. Prisons *W. P.* No. 64 of 1855.

Quantity and
description of cloth-
ing and bedding *W.*
P.

2693. Every male prisoner is to be allowed two dhoties, one mirzai, one angocha, and one blanket: and each female two lengahs, two koortees, one chudder. A tat-puttee bedding, six feet by two, is to be allowed to each prisoner; and on the 20th September a blanket coat and an additional blanket are to be served to each, the latter articles being taken back at the end of the cold weather, and stored for another season. Extra tat-puttee beddings, and extra blankets marked H and numbered consecutively, are to be allowed to every hospital. C. O. Insp. Prisons *W. P.* No. 5, July 1, 1847. If a prisoner has not retained the blanket allowed to him during the year, a second should be supplied to him on the 15th November. C. O. Insp. Prisons *W. P.* No. 20, August 8, 1849.

Hajut, and indi-
gent prisoners.

2694. The several magistrates throughout the Lower and Western provinces are authorized to furnish to the prisoners under examination, or committed for trial, and generally to all other prisoners who may from indigence be unable to supply themselves, the same quantity and description of clothing as is at present, or may hereafter be, authorized for those prisoners who are strictly denominated convicts. The magistrate is to exercise his discretion in furnishing such articles for the prisoners above alluded to, with reference to their real wants and necessities, whether at the time at which the prisoners are first brought in, or at any other periods during their confinement. The magistrates of the several stations within the Western provinces are authorized to furnish annually an additional blanket. C. O. No. 209 of vol. 1.

SECTION V.

OF FETTERS AND OFFENCES.

2695. In all cases wherein no specific orders are issued, either by the nizamat adawlut or the sessions court, for the confinement of a prisoner with or without irons, the magistrate is at liberty to exercise his own discretion, and to direct the prisoner to be confined in fetters or not, according as the same appears to him proper or necessary for his safe custody, from the nature and circumstances of the case, considered with the prisoner's rank and former condition in life. C. O. No. 122 of vol. 1.

Fetters.

Discretion to impose allowed to magistrate in certain cases.

2696. So, the magistrates may use their discretion in imposing fetters on native soldiers and camp-followers, who are made over to the civil authorities to undergo sentences of imprisonment adjudged against them by courts martial. C. O. No. 155 of vol. 3. *W. P.*

Cases of soldiers and camp followers.

2697. The rules of sect. 3, Reg. II. 1834 (which exempt prisoners from labor in certain cases on payment of a fine) do not interfere with the general discretion vested in magistrates of imposing fetters, or otherwise restraining refractory prisoners. Reg. II. 1834, sect. 4.

Prisoners who have bought exemption from labor.

2698. The magistrates are not to impose fetters on persons confined for misdemeanors, except in the event of special necessity arising out of bad conduct of the offender during his imprisonment, which may make such restraint indispensable for his security: when, therefore, the magistrate places fetters under this restriction on any person convicted of misdemeanor, he is to record on his proceedings the grounds of the measure in each case. C. O. Nos. 217 and 223, *L. P.* and No. 224 *W. P.* of vol. 1.

Prisoners confined for misdemeanors.

2699. Female prisoners are not to be subjected to irons, except in cases where some special necessity exists for their use, as a precautionary measure, such as by way of security to prevent escape. C. O. No. 31 of vol. 3.

Female prisoners.

2700. The fetters generally used in the public jails are to be of a light and uniform construction; and no fetters exceeding the usual size and weight are to be put upon a prisoner without the special sanction of the magistrate. Jail rules, sect. 9, para. 10.

Fetters to be made of a certain size and weight.

2701. The fetters are to consist of two bars connected by a moveable ring, and fastened to the legs by rings in such a manner as to allow sufficient freedom of motion; and those in ordinary use are not to exceed in weight one seer and a half, the seer being that of eighty siccas. The magistrate may cause fetters of less weight to be used whenever it appears safe and proper, with reference to a prisoner's age, size, strength, state of health, or to his general behaviour and character. This rule, however, is not meant to preclude the use of heavier fetters in cases of an attempt to escape, or disorderly conduct, for which the substitution of heavy fetters is expressly authorized by section 6, Reg. XIV. 1816. C. O. No. 207 of vol. 1.

How to be made.

Fetters to be kept bright and clean.

2702. The irons worn by prisoners, and more especially the rings around their limbs, are at all times to be kept bright and polished. All sordes and dirt are to be carefully removed and prevented from remaining in contact with the skin of the convicts. The civil surgeon is occasionally to examine, and to record the state in which he finds them for the information and orders of the magistrate. C. O. Insp. Jails *L. P.* No. 29, December 24, 1855.

Leather mozehs to be used.

2703. In order to protect the legs of the convicts from ulceration in consequence of the friction of the fetters, the magistrate is directed to cause every convict in the jail, confined in fetters, to wear leather gaiters or mozehs, extending a few inches above the ankle; and to enjoin the guards to be careful that the convicts do not take them off while out at their work. Care is to be taken that the rings of the fetters, placed on newly admitted convicts, are quite clean, and freed from all asperities arising from dirt or rust or carelessness in the original construction. If ulceration ensues at any time, the fetters should be immediately removed. Magistrates are at liberty to use their discretion in substituting chains for the long iron links generally in use; but it seems doubtful whether the security of the prisoners might not be diminished by the adoption of chains,—as the chains might be sooner cut through, unless the links were made of a thickness which would add materially to their weight. C. O. Nos. 38 and 95 of vol. 2.

Chains may be substituted for long links.

Handcuffs and neckchains.

2704. Handcuffs and neck-chains may be used occasionally for prisoners evincing a refractory disposition; but except in cases of emergency, the necessity for them is to be previously reported for the orders of the magistrate. Jail rules, sect. 9, para. 11.

The imposition of rings on prisoners not sentenced to irons, forbidden as a general measure.

2705. The practice of placing an iron ring round one ankle of prisoners sentenced to imprisonment without labor and irons, or to imprisonment with labor but without irons, is prohibited as a general measure. Prisoners should be dealt with in jails in strict accordance with the terms of the sentences judicially passed upon them; and if, in cases of infraction of jail discipline or refractory conduct, it may be found necessary to put irons or rings upon prisoners of any description, the magistrate is immediately to place on record in the jail order book the reasons which have induced him to order their imposition. C. O. Insp. Jails *L. P.* May 21, 1856.

Stocks.

2706. The construction of substantial jails in each jurisdiction having rendered it unnecessary for the safe custody of prisoners in such jails that they should be confined in stocks, except in special cases of exigency, the ordinary use of stocks in the public jails is strictly prohibited. If at any time a magistrate, under special circumstances, considers the temporary use of stocks to be indispensably requisite for the custody of any of the prisoners under his charge, he is authorized to direct the same; but is immediately to transmit a full report of the case for the information and orders of the session judge. C. O. No. 183 of vol. 1.

Fetters not to be removed without order of magistrate.

2707. The jailor is not without a special order from the magistrate to take off the irons of any prisoner, except in case of any sudden emergency not admitting of the delay of a reference to the magistrate, or when prisoners are confined in the infirmary in too

weak a state to bear the weight of their irons; and such cases, when they occur, are to be immediately reported to the magistrate. Jail rules, sect. 9, para. 13.

2708. The fetters of the prisoners are to be examined by the jailor or his deputy before they are put into the ward. And he is at the same time to enjoin on the convicts the necessity of keeping the rings clean, and to bring to the notice of the magistrate any instances of their disobeying this order. C. O. No. 95 of vol. 2. Jail rules, sect. 9, para. 12.

Jailor to examine fetters, and to take care that they are kept clean.

2709. Any convict who is found to have loosened his irons, is to be fettered with handcuffs and neck-chains. Jail rules, sect. 9, para. 32.

If fetters have been loosened.

2710. If any prisoner makes a riot and disturbance, or attempts to resist any of the guard, he is immediately to be put in chains and handcuffs, and the circumstances of the case are to be reported to the magistrate. Jail rules, sect. 9, para. 27. And the imposition of handcuffs under such circumstances by order of the magistrate is no bar to a sentence by a competent court on a formal trial for such riot. Reports *L. P.* 1852, part 1, page 596.

Prisoners making disturbance.

2711. For the purpose of enabling the magistrate to maintain good order and discipline among the prisoners confined in the public jails, or other authorized places of confinement, and to enforce a due observance of the prescribed rules by the employment of the prisoners under their charge, they are vested with authority to punish, on a summary inquiry, the offences below specified. Reg. XIV. 1816, sect. 4.

Offences.
Magistrate is vested with authority to punish on a summary inquiry the following offences, viz.

2712. A contumacious refusal to work by any prisoner sentenced to hard labor, or though not so sentenced who is subject to labor under any provision in the regulations, or under the discretion declared to be vested in the magistrate, by the orders of the court of nizamat adawlut, with respect to prisoners not exempted from labor by the sentences of the criminal courts, and not incapable of bodily labor from age, sickness, or other infirmity. Reg. XIV. 1816, sect. 5, cl. 1.

contumacious refusal to work ;

2713. Wilful neglect and indolence in the performance of any prescribed work by a prisoner subject to labor, as described in the above clause, especially after previous admonition. Reg. XIV. 1816, sect. 5, cl. 2.

neglect and indolence ;

2714. Wilful disobedience to any of the written rules for the observance of prisoners and internal economy of a public jail, which have been translated into the current language of the country, and suspended on a board within the jail for general information, as directed in the printed jail rules now in force. Reg. XIV. 1816, sect. 5, cl. 3.

disobedience to written rules suspended in the jail for general information ;

2715. Refractory behaviour by prisoners; such as resistance to the jailor, guards, or other public officers, in the regular discharge of their proper functions; abusive language to any such officers; and generally, any culpable behaviour towards them which does not involve a serious act of criminality, such as cannot be duly punished by the magistrates, and should therefore be brought before the sessions court. Reg. XIV. 1816, sect. 5, cl. 4.

refractory behaviour ;

2716. Any other instance of disorderly conduct by a prisoner; such as riot, insurrection, attempt to escape, taking off, or loosening or attempting to loosen by filing, cutting or otherwise, his own irons, or those of other prisoners, with a view to escape; conspiring

disorderly conduct ;

with other prisoners for the purpose of insurrection or escape, or for any other criminal purpose ; abusing or assaulting another prisoner ; and generally any misconduct committed by a prisoner whilst in custody, which under the regulations in force, or from its aggravated nature, does not exceed the competency of the magistrate, and is therefore more properly cognizable by the sessions court. Reg. XIV. 1816, sect. 5, cl. 5.

and disabling themselves for labor.

2717. Prisoners disabling themselves for labor are guilty of a breach of prison discipline, and as such are punishable by the magistrate under the general rules laid down for the management of public jails. Const. No. 1152.

unishment the magistrate may award ;

2718. The powers vested in the magistrates for the punishment of the offences specified in the preceding section, which on a summary inquiry appear to have been committed by any of the prisoners under their charge, are declared to be as follows ; due regard being had to the nature of the offence, the condition of the prisoner, and every other just consideration applicable to the case. Reg. XIV. 1816, sect. 6, cl. 1.

for contumacious refusal to work, neglect, or indolence ;

2719. In cases of a contumacious refusal to work, or of wilful neglect and indolence in the performance of any prescribed work, within the first and second clause of section 5 of this regulation, the magistrate may cause the prisoner to be moderately corrected with a rattan [in certain cases, see below] ; and in the instance of a prisoner's pertinaciously refusing to work, may likewise order his diet allowance to be reduced, in such degree as is consistent with his support, until he performs the work required from him. Reg. XIV. 1816, sect. 6, cl. 2.

for disobedience to written rules, refractory or disorderly conduct.

2720. The offences specified in the third, fourth, and fifth clauses of the preceding section are punishable, according to the nature and circumstances of the case, by stripes with a rattan, not exceeding the general limitation prescribed for this mode of punishment by a magistrate, viz. thirty rattans [in certain cases, see below], or by close and as far as practicable by solitary confinement ; or when a prisoner has attempted to escape, by the substitution of heavy fetters for those in ordinary use, which are directed by the jail rules to be of a light and uniform construction ; by the temporary addition of neck-chains of a moderate weight, when the prisoner has been refractory or turbulent, or guilty of any act of violence ; and in aggravated or emergent cases of this nature, by the further restraint of handcuffs, whilst such restraint, which is never to be imposed without necessity, appears to be requisite for the safeguard of the prisoner, or to prevent his doing mischief to others. Reg. XIV. 1816, sect. 6, cl. 3.

Convicts under sentence of imprisonment for life knowingly doing an act likely to cause the death of another, how punishable.

2721. Within the territories subject to the government of the East India Company, except within the local limits of the jurisdiction of the supreme court, and except within the settlements of the Straits of Malacca, any convict sentenced to imprisonment for life, or to transportation for life, who does any act, with the intention of thereby causing, or with the knowledge that he or she is likely thereby to cause the death of any person, is, upon conviction thereof before the sessions court, subject to confirmation by the sudder court, to be punished with death or with transportation for life, or with corporal punishment not exceeding 39 stripes, whether such convict does or does not by such act cause the death of any person. Act XVIII. 1845, sect. 1.

2722. Any such convict as aforesaid, who commits any offence whatever, other than the offences mentioned in the preceding section, or who is guilty of violent or disorderly conduct, after having been punished by the order of the superintendent of the jail in which he or she is confined, is, upon conviction thereof before the sessions court, subject if the sentence be for transportation for life to confirmation by the sudder court, to be punished with transportation for life, or with corporal punishment not exceeding 39 stripes. Act XVIII. 1845, sect. 2.

Such convicts guilty of other violent or disorderly acts, how punishable.

2723. The provisions of cl. 1, sect. 2, Reg. II. 1834 (which rescinds the power to pass sentence of corporal punishment) do not exempt convicts sentenced to labor in irons from such moderate corporal punishment during their imprisonment, as is unavoidable for the maintenance of the discipline of the jails. Reg. II. 1834, sect. 6.

Laboring prisoners are still liable to corporal punishment;

2724. Under the above provision, all offences which are opposed to the maintenance of discipline in the public jails (as those enumerated in sect. 5, Reg. XIV. 1816) are, when committed by convicts sentenced to labor in irons, punishable with stripes; but it is to be borne in mind, that such punishment must be moderate, and that it should be inflicted only when it is thought to be unavoidable for the maintenance of the discipline of the jails. (a) C. O. No. 235 of vol. 3.

but it must be moderate, and only in unavoidable cases.

2725. Corporal punishment is to be inflicted in the presence either of the magistrate or of his assistant; and the office of superintending the infliction of stripes is never to be deputed to a native ministerial officer. C. O. No. 59 of vol. 2.

The infliction must be superintended by the magistrate, or his assistant.

2726. No prisoner is to be flogged without the opinion of the civil surgeon being first taken as to whether the case be one in which that punishment can be safely administered. As a general rule, stripes should be inflicted upon the breech and not upon the back, proper measures being adopted to guard against the blows falling upon any other than the part intended to receive them. C. O. Govt. Bengal, No. 1019, May 13, 1852.

Examination by surgeon before punishment.

Stripes to be inflicted on the breech.

2727. No female is to be sentenced to corporal punishment by stripes. Reg. XII. 1825, sect. 3.

Females are not liable to corporal punishment.

2728. The powers vested in magistrates by the above rules may, of course, be exercised by joint magistrates, and assistant magistrates, who are not stationed at the same place with the magistrates, and who under the general regulations are invested with the authority of magistrates, with respect to prisoners under their immediate charge. The magistrates are further empowered to refer to their assistants at the sudder stations any cases within the provisions of this regulation: observing the rule prescribed in section 21, Reg. IX. 1807*, viz. that the order of reference direct whether the assistant is to submit his proceedings for the magistrate's decision, or to pass his own determination on the case referred to him. If the assistant be authorized to determine the case referred to him, he is empowered to pass the same order as might have been passed by the magistrate; but his decision is open to revision [on appeal†] by the magistrate, if the latter see cause for it, as provided in the section above cited with respect to all judgments passed by the assistant to a magistrate, who is not vested with the full powers of magistrate. Reg. XIV. 1816, sect. 7.

Power of joint magistrate and assistant in such cases.

* v. para. 771.

† v. para. 1849.

(a) This order rescinds C. O. No. 1 of vol. 3, which made it imperative that the corporal punishment should be inflicted at the moment, following so immediately on the offence, as to deter others by the force of example.

Magistrate may
commit if such pun-
ishment is inad-
equate.

2729. If in any case the magistrate considers the punishment he is authorized to inflict inadequate to the offence, he is to commit the prisoners to take their trial before the sessions court. Const. No. 85.

But he cannot
both punish and
commit.

2730. Prisoners punished by the magistrate for breach of jail discipline cannot be committed to the sessions for the same offence, as any further punishment would be cumulative and therefore illegal. N. A. R. vol. 6, page 58.

Judge cannot in-
flict corporal pun-
ishment.

2731. It is not competent to a session judge to award stripes under sect. 6, Reg. II. 1834, that power being vested solely in the magistrate for the maintenance of discipline in the jail. Const. No. 1302.

Example of pun-
ishment.

2732. A prisoner confined in jail under sentence of 7 years' imprisonment without labor, was convicted of making an assault on the magistrate, while in the execution of his duty; and sentenced to receive 15 corahs, and to be imprisoned in handcuffs and fetters for the space of 7 years in addition to his former sentence, and to be kept to hard labor: but the magistrate was allowed to relax the restraint of handcuffs, whenever from the prisoner's behaviour he might consider it safe to do so. N. A. R. vol. 1, page 329.

2733. A prisoner, under sentence of 14 years' imprisonment, was convicted of attacking the magistrate, while in the execution of his duty, and striking the jailor and the jemadar, and sentenced under sect. 7, Reg. LIII. 1803, to transportation for life. Reports *L. P.* 1853, part 2, page 152.

2734. The life-convicts in the Alipore jail attacked the magistrate, jailor, and guards. The two principals were convicted of assaulting the jailor in the execution of his duty with the intent to cause his death, and were sentenced capitally. The remaining prisoners were convicted of aiding and abetting in the attack on the magistrate and his officers, severely wounding them, and of having joined in such attack with the intent of causing death, or with the knowledge that they were likely to cause death, and were sentenced to transportation for life. Reports *L. P.* 1852, part 1, page 295.

2735. The prisoners, while convicts under confinement in the Alipore jail, assaulted and wounded some of the other convicts, and were sentenced, the ringleader to transportation for life (13 years' of his former sentence being still unexpired), and the remainder to additional imprisonment for 3 years. Reports *L. P.* 1852, part 1, page 596. In a similar case the ringleaders were sentenced to 7 years', and the others to 5 years' additional imprisonment. Reports *L. P.* 1852, part 1, page 605.

Precedent of riot
and insurrection in
jail.

2736. The prisoners, convicts, were convicted of riot and insurrection in jail, and sentenced, the leader to imprisonment with labor and irons in transportation for life, and the others to imprisonment with labor and irons in banishment for 14 years. N. A. R. vol. 6, page 61.

Records to be
kept of such cases.

2737. It is not necessary to make a detailed record of the evidence, or of any part of the proceedings, held in the summary inquiries authorized by this regulation; nor is it requisite to examine witnesses upon oath, except in cases of a serious nature, involving offences specifically provided for by the general rules in force for the administration of criminal justice. But a record is to be kept of every summary conviction and punishment; stating the name of the prisoner; the offence charged against him; the substance of the

evidence and conviction; or the magistrate's personal view when the facts of the case have taken place within his view; and the punishment ordered with the date of the order; to be signed by the public officer by whom it is passed. The record so authenticated is to be kept ready for the inspection of the session judge on his visiting the jail, that a reference may be made to it in the event of any complaints being preferred by the prisoners. Should the session judge see cause to disapprove the order of a magistrate, or his assistant, in any instance, he is to notice the same to the magistrate, with any instructions which appear necessary, and are consistent with the regulations in force; or if the magistrate, or his assistant, appears in any instance to have been guilty of any gross neglect, or other misconduct, such as is required to be reported to the nizamat adawlut by sect. 63, Reg. IX. 1793 (*Ced. Prov.* sect. 30, Reg. VII. 1803)* or by any other regulation in force, the judge after calling for any requisite explanation is to report the same accordingly. Reg. XIV. 1816, sect. 8.

Duties of session judge.

* *v. para.* 699.

2738. No appeal lies to the session judge from the order of a magistrate passed under Reg. XIV. 1816. The penal provisions of that regulation are not repealed by Act XVIII. 1844, which regards merely arrangements of executive control and superintendence. Section 2 of the Act quoted by no means confers an unlimited authority on the government to direct the infliction of such punishments within jails as it pleases. Letter of Nizamut Adawlut to Judge of Bakergunj, No. 295, March 24, 1853.

No appeal lies to the judge.

Power of government.

SECTION VI.

OF ESCAPE.

2739. The magistrate is to keep up, and regularly revise, in the vernacular language, a register of the names of convicts who have broken jail, or have otherwise effected their escape, in the annexed form. A copy of this register is to be forwarded on the 1st of January and the 1st of July in each year, to the superintendent of police.

Register of escaped prisoners.

Register of convicts who have broken jail, or have otherwise effected their escape.

Name and caste of the persons who have escaped from jail.	Name of the father.	Supposed age.	Description of his person.	Supposed usual place of residence.	Amount of reward offered for his apprehension.	Date of apprehension, surrender, or ascertained death.	No. of case; the year in which it is preferred; and in what part of the record office the record is to be found.

Reg. III. 1812, sect. 9, cl. 1 and 2.

2740. A half yearly return is to be made to office of inspector of prisons on the 1st of January and 1st of July in the subjoined tabular form, shewing the number of convicts who have broken jail during the 20 years preceding and are still at large. Persons, who escaped more than 20 years since, may be inserted, if special reasons exist. When any such convict is re-captured, his name should not be omitted from the next succeeding return, but

Half yearly escape statements.

the fact of his apprehension should be mentioned in the column of remarks and his name struck out of the subsequent lists.

1	2	3	4	5	6
Name of convict. Father's name, caste, village to which he belongs, pergunnah, and zillah.	Offence of which he was convicted, sentence, and date of sentence.	Date and circumstances of escape.	Amount of reward offered.	Description of the convict's personal appearance.	Remarks.

C. O. Insp. Prisons *W. P.* Nos. 60 and 68 of 1855.

Particulars of each escape to be reported.

2741. Government requires that proper vigilance should be exercised in preventing the escape of prisoners from jail. The particulars of each escape are to be explained in the monthly returns. C. O. Govt. *Bengal*, No. 1368, October 20, 1849.

Inquest to be held on dead bodies of prisoners before removal.

2742. To prevent the escape of prisoners from jail by feigning themselves dead, the magistrate is not to allow the removal of the bodies of prisoners who die in jail, until an inquest has been held on them by the native surgeon of the station, and such other persons as the magistrate appoints for the purpose, and the result of such inquest regularly reported. C. O. No. 26 of vol. 1.

And in cases of doubt the surgeon is to inspect the body.

2743. In any case in which there appears to the native doctor, or other officers associated with him, to be the slightest doubt with regard to the actual death of a prisoner, the body is not to be removed until it has been examined by the civil surgeon himself. But surgeons are not to be required to inspect previously to their removal the bodies of all prisoners reported to have died in the jail. C. O. No. 204 of vol. 1.

Proceedings of magistrate to be submitted to judge.

2744. All proceedings held by magistrates in regard to the escape of prisoners, as well as any proceedings respecting the conduct of the guards from whose custody the escape has been effected are to be submitted for the inspection and orders of the session judge. Reg. XVII. 1816, sect. 14, cl. 1. Const. No. 1162.

Information of escape to be forwarded to superintendent of police.

2745. The magistrates are to communicate to the superintendents of police of their respective divisions all instances of convicts breaking jail before the expiration of the period of sentences, as well as every instance in which a prisoner in custody, during examination, or commitment for trial, or under requisition of security for good behaviour, effects his escape; transmitting for the information of the superintendent of police a copy or extract of the proceedings holden by them on such occasion, together with information of the measures taken to re-apprehend the persons who have escaped; and stating at the same time whether in their opinion it is advisable to offer any reward for the re-apprehension of such persons, and if so the amount of such reward. Reg. XVII. 1816, sect. 14, cl. 2.

Rules for offering rewards for re-apprehension.

2746. The reports regarding the escape of prisoners to the session judges and the superintendents of police, required from magistrates by the above provisions, are to be forwarded as heretofore [before the passing of Act XVIII. 1844]. But the power of sanctioning rewards for the re-apprehension of escaped prisoners is transferred from the superintendents of

police to the magistrates, who are authorized to proclaim rewards in such cases to the extent of 50 rupees. In cases where it is deemed expedient to offer a higher reward than the above, the magistrates are to report the circumstances direct to government for its sanction. In cases however in which heinous offenders have escaped, or on occasions of emergency, the magistrates are to exercise a discretion, as heretofore, in offering a reward not exceeding 100 rupees, reporting the offer for the confirmation of government. C. O. Govt. Bengal No. 1072, October 10, 1844, para. 9.

2747. All applications for the issue of rewards for the recovery of escaped convicts from the jails under the inspector of prisons must in the Western Provinces be made to that officer who is authorized to sanction such offers to an amount not exceeding 100 rupees in each case. Where larger offers are proposed, the inspector will report the case for the previous sanction of government. Govt. Order *W. P.* No. 149, January 18, 1851.

Inspector *W. P.* may sanction a reward of 100 rupees in each case.

2748. In the Western provinces magistrates are required, on the escape of a convict for whose re-apprehension a reward has been sanctioned of 100 rupees or upwards, to forward without delay a notification in annexed form for publication in the Agra government gazette, accompanying the same with a translation into Oordoo.

Notification in government gazette.

Descriptive roll of convict sentenced to imprisonment for life (or years) who escaped from confinement on the of 184 .

Name of Prisoner.	Caste and age.	RESIDENCE.			Crime and date of sentence.	Whence escaped.	Remarks.
		Village.	Pergunnah.	District or country.			
							To contain description of fugitive's person, notice of any reward offered for his apprehension, or other particulars.

MAGISTRATE'S OFFICE,
Zillah the of 184 . }

A. B.,
Magistrate.

C. O. No. 105 of vol. 3. *W. P.*

2749. The superintendent of police is to employ, in concert with the magistrate, the means which he considers best adapted to effect the re-apprehension of the offender. Reg. XVII. 1816, sect. 14, cl. 3.

Magistrate and superintendent to adopt means for re-apprehension.

2750. The cases of convicts, or of prisoners ordered to be confined till they give security for good behaviour, who effect their escape while under sentence, or order of imprisonment, from a jail or other place of confinement, or from the custody of their guards, are cognizable by the magistrate; and upon conviction, the magistrate is empowered to sentence the offenders to corporal punishment not exceeding thirty stripes with a ratan, and (if sentenced to a limited period of imprisonment) to suffer such period of imprisonment beyond the unexpired term of their original sentence, as he judges proper, provided, however, that such additional imprisonment is in no case to exceed the period of two years. If the prisoner is in confinement under an order to find security for good behaviour, he may be sentenced to imprisonment for a specific term not exceeding two years. Reg. XII. 1818, sect. 5, cl. 1.

Cases of escape cognizable by magistrate;—limit of punishment.

He may commute stripes to imprisonment ;

2751. A magistrate may sentence a prisoner, convicted of escaping, to one year's imprisonment in lieu of stripes, in addition to the term he is authorized to award under the above provisions. Const. No. 1184.

but may still inflict stripes.

2752. But under the terms of the exception contained in sect. 6, Reg. II. 1834, the magistrate is not precluded by sect. 2 of that regulation from awarding stripes to persons convicted of any of the offences enumerated in these provisions. C. O. No. 14, November 13, 1846. (*This rescinds Const. No. 993.*)

No subsequent punishment can be added to that immediately inflicted for breach of jail discipline.

2753. Five convicts were tried for heading an insurrection in the Deegah penitentiary, in which the magistrate's authority was resisted, and his life placed in danger, and were convicted ; but no punishment was awarded, because the magistrate had inflicted corporal punishment, previous to commitment, for breach of jail discipline ; and any sentence would therefore have been a second punishment for one and the same offence. N. A. R. vol. 6, page 58.

So, prisoners escaping before trial.

2754. The cases of prisoners apprehended and detained in custody under examination on charges of a criminal nature, but not admitted to bail, who effect their escape from a jail or other place of confinement, or from the custody of their guards, are also cognizable by the magistrates ; and such prisoners, being duly convicted of the offence in question, are liable to a sentence of imprisonment in no case exceeding six months. Reg. XII. 1818, sect. 5, cl. 2.

Example of escaping from hajut.

2755. A prisoner in the hajut-tujveez jail, convicted of making his escape from the Bareilly jail during an insurrection of the prisoners, in which several persons were killed and wounded, there being, however, no proof that he had been actively concerned in the insurrection, was sentenced to imprisonment for 5 years with hard labor. N. A. R. vol. 1, page 346.

So, prisoners escaping after sentence, and before issue of warrant.

2756. A prisoner was convicted and sentenced by the sessions court, but the issue of the warrant was stayed pending a reference regarding other prisoners in the same case to the nizamut adawlut : before orders were received on the reference, the prisoner made his escape from jail. Held that he was punishable by the magistrate as a convict under the above provisions. Const. No. 1246.

Sentence above 6 months' to be reported to judge.

2757. When the magistrate sentences any person under these provisions to a longer period of imprisonment than six months, he is to report the case to the session judge ; and the powers vested in the session judge, and the nizamut adawlut, with regard to the revision of sentences and orders passed by the magistrates, are applicable to all sentences and orders passed by the magistrate under this regulation. Reg. XII. 1818, sect. 6, cl. 1.

Same powers may be exercised by superintendent of police and joint magistrate.

2758. The superintendents of police, and officers vested with the powers of joint magistrate, are competent to exercise the same powers and functions as are entrusted to the magistrates by the above provisions. Reg. XII. 1818, sect. 6, cl. 2.

Offender to be committed to sessions, if escape is attended with severe personal injury to any person.

2759. The rules contained in the two preceding clauses [paras. 2750 and 2754] are not, however, to be considered applicable to the cases of convicts, or other prisoners, who in effecting their escape, or in attempting to effect their escape, are guilty of such a degree of violence towards their guards or other individuals, as may in its consequences involve the death, wounding, or severe personal injury of any person or persons. In all

cases of that nature, it is the duty of the magistrate to commit the offender to take his trial before the sessions court. Reg. XII. 1818, sect. 5, cl. 3.

2760. Any persons brought to trial before the sessions court [under the above provision] are liable on conviction to such further punishment, in addition to their former sentences, as may be adjudged against them, on consideration of the circumstances of the case, under the provisions contained in this regulation. Reg. LIII. 1803, sect. 9, cl. 1.

Punishment in such cases.

2761. When the escape of a convict is not attended with violence, it is not competent to the magistrate to commit him to the sessions, although he may have been several times previously convicted of that offence. The magistrate must himself dispose of the case. Const. No. 501. N. A. R. vol. 6, page 187.

Magistrate cannot commit, unless escape is attended with violence.

2762. A prisoner effecting his escape while under commitment cannot, on his re-apprehension, be committed on the original charge and on a second count for the escape. A second count should charge some act arising out of the same circumstances as the original or first count. N. A. R. vol. 6, page 75.

A second count for escaping from jail cannot be added to the charge for the original offence.

2763. A prisoner sentenced to imprisonment for escaping from jail is entitled to exemption from labor, on payment of a fine, for the period of his confinement for that specific offence. Const. No. 1215.

Prisoners under sentence for escape may be exempted from labor on payment of fine.

2764. A prisoner sentenced by the session judge to fine and imprisonment appealed to the nizamat adawlut, and was admitted to bail pending the appeal; he absconded and the bail was forfeited. Held that his property was not liable to forfeiture for evasion of process, under Reg. XI. 1796 and sect. 26, Reg. XX. 1817, which are applicable only to persons charged with a crime, but not convicted; but that he must be proceeded against as an absconded convict. Const. No. 1124.

Property of persons escaping pending appeal is not liable to forfeiture.

2765. Any convict, under sentence of transportation for life, who has been transported to any place beyond sea, and escapes from such place of transportation, and returns without permission to Bengal, or to any part of the Company's territory under the presidency of Bengal, is on conviction thereof, to the satisfaction of the nizamat adawlut, and if no circumstances appear to that court to render such convict an object of mercy, to be adjudged to suffer death. Reg. LIII. 1803, sect. 9, cl. 2.

From transportation.

When sentence is for life, the punishment for return is death.

2766. A futwa must be taken on trial of convicts for escape under the above provisions. Const. No. 47.

Futwa must be taken in such cases.

2767. A convict under sentence of transportation for life made his escape from Prince of Wales's Island, and returned to Bengal. The court, not considering him to be a proper object of capital punishment (on what account does not appear) sentenced him to 39 korahs and to be again transported. N. A. R. vol. 1, page 231.

Examples of punishment for returning from transportation.

2768. A prisoner was convicted of making his escape from ship-board, while on his way to the place to which he had been sentenced to be transported. Sentence:—25 strokes of a ratan, and his former sentence to be considered in full force. N. A. R. vol. 3, page 168.

2769. A prisoner was convicted of returning from Prince of Wales's Island, where he was under sentence of transportation for life. The advanced age of the prisoner (90 years)

was held to be a bar to capital or corporal punishment; and he was ordered to be transported again to the place whence he had returned. N. A. R. vol. 4, page 142.

2770. A convict who escaped, and returned from transportation to the place of his birth, was sentenced again to transportation for life with hard labor. One judge proposed death, but it was considered unnecessary and inexpedient. Another judge proposed that he should be sentenced, in addition to re-transportation, to be double ironed and kept to the hardest labor of which the system of jail discipline admits, for 2 years; but the other judges held that such a sentence was beyond their competency. Reports *L. P.* 1853, part 1, page 3.

Neglect of guards.

Punishment in cases of neglect, and of connivance ;

2771. All guards of whatever description, having the custody of convicts who escape, and who appear on the magistrate's enquiry to have been guilty of wilful neglect, are to be immediately dismissed from the public service; and, should any connivance or further criminality appear against them, are to be committed or held to bail, according to the circumstances of the case, for trial before the sessions court, that, on conviction, they may receive the punishment which the law directs. *Beng. and Ben. Reg.* II. 1799, sect. 6. *Ced. Prov. Reg.* VIII. 1803, sect. 23.

whether before or after conviction. Magistrate how to proceed in cases of military guards

2772. The above provision is extended to guards in charge of prisoners who escape from custody, whether before or after conviction; but is not applicable to military guards from the provincial battalions (while such battalions continue subject to military law) or from any regular corps of the army. Whenever it appears to the magistrate that a guard, furnished from any corps subject to martial law, has been guilty of wilful neglect in guarding the prisoners under his charge, or of connivance at the escape, or the attempt to escape, of any prisoner, or of any other act of a criminal nature in the discharge of his duty, the magistrate is to cause the offender to be delivered over to the officer commanding the detachment to which he belongs with a charge in writing, that he may be tried and punished on conviction by a court martial. *Beng. and Ben. Reg.* XI. 1806, sect. 10, cl. 2. *Ced. Prov. Reg.* VIII. 1805, sect. 14, cl. 5.

How far magistrate may punish in cases of gross neglect or connivance.

2773. A magistrate may punish a burkundaz found guilty of gross neglect or connivance in the escape of a prisoner by fine and imprisonment under the provisions of sect. 19, Reg. IX. 1807, instead of committing the case to the sessions under the above provision; but if he thinks the sentence which he is thereby authorized to pass insufficient, he should proceed to commit the offender. Const. Nos. 206 and 1131.

Magistrate cannot impose fine of more than one month's pay;

2774. A magistrate is not authorized under cl. 5, sect. 5, Reg. VIII. 1809, to adjudge a burkundaz, from whose custody a prisoner has escaped, to pay a fine equal to 3 months' salary. The court ordered the restitution of what had been levied exceeding one month's salary. Const. No. 192.

nor impose labor;

2775. A magistrate is not authorized under Reg. XIV. 1816, or any other enactment, to sentence to hard labor a burkundaz found guilty merely of neglect of duty, as in conniving at the escape of a prisoner. Const. No. 712.

nor additional imprisonment in lieu of stripes.

2776. As burkundazes, chokeedars, &c., found guilty of neglect of duty, were not formerly liable to stripes in addition to imprisonment, the provisions of Reg. II. 1834, in prohibiting the infliction of stripes, do not authorize an addition to the period of imprisonment to which they were liable previous to the issue of that enactment. Const. No. 923.

2777. The superintendent of police cannot exercise any authority over the guards of prisoners effecting their escape. Const. No. 1162. Superintendent of police has no power in such cases.

2778. The above provisions do not empower the magistrate to declare by a public order that such officer should never again be employed in the zillah courts in any capacity whatever. Const. No. 157. Magistrate cannot declare such officer ineligible for future employment.

SECTION VII.

OF LABOR, AND EMPLOYMENT OF CONVICTS.

2779. The officers in direct charge of jails are to receive, through the session judges, from the government, all orders regarding the employment of convict labor. C. O. Govt. *Bengal*, No. 1072, October 10, 1844, para. 3. To be directed by government.

2780. It is the bounden duty of the magistrates to enforce the due execution of the sentences passed on criminals, to take care that their labor is judiciously directed to objects of public benefit, and to prevent the periods of their confinement from being passed in ease and idleness. C. O. No. 158 of vol. 1. Duties of magistrate in regard to employment of convicts.

2781. Labor can form part of the punishment only when included in the sentence ; and therefore a magistrate has only to frame his sentences with or without it according to his own judgment. Resolution N. A. No. 292, April 3, 1846. *L. P.* Labor cannot be imposed unless it be mentioned in the sentence.

2782. Three prisoners, sentenced to imprisonment without irons, and to labor inside the jail, petitioned to be allowed to work on the roads, and consented to wear fetters. It was held by the nizamat adawlut, that the local officers were not competent to make any alteration in the sentence passed on a prisoner. Const. No. 1005. No alteration can be made in sentence.

2783. There is no objection to session judges inserting an exemption from hard labor, in the warrants issued by them to the magistrate, in cases wherein they may, on consideration of the rank or situation in life of any person sentenced to imprisonment, consider him to be an improper object of hard labor. C. O. No. 44 of vol. 1. Judge passing sentence may exempt from labor.

2784. The practice of employing convicts in pulling punkahs, watering tatties, and similar menial occupations in public offices, is objectionable, and must be discontinued. Punkah-pullers hired in consequence of these orders may be charged for in a contingent bill. C. O. Govt. *Bengal*, No. 1203, July 9, 1851. C. O. Insp. Prisons *W. P.* No. 42, February 24, 1854. Prisoners not to be employed in public offices.

2785. The employment of prisoners in repairing the public roads is consistent with the Mahomedan law ; and therefore all convicts sentenced to imprisonment [with labor] may be so employed, or in other similar public works, with an exception to any person who is incapable of labor from age, sickness, or other infirmity. C. O. No. 3 of vol. 1. All convicts may be employed on public works ;

but a distinction
is to be made.

2786. The practice of working on the roads every description of prisoners capable of labor, indiscriminately, not excepting those confined for short periods and slight offences, is very objectionable: magistrates should be careful not to employ in that manner persons unfit to be so exposed from their previous habits, or the nature of their offence. C. O. No. 217 of vol. 1.

Report to be
made if any prisoner
ought to be exempt-
ed from labor.

2787. But in case any convict sentenced to imprisonment should, from his rank and situation in life or otherwise, appear an improper object to be employed on the public roads, or other similar works, the magistrate is to report the same, with the circumstances of the case, for the special orders of the nizamat adawlut. C. O. No. 8 of vol. 1.

Prisoners may be
usefully employed
on public buildings;

2788. Experience having shown that the labor of the prisoners, confined in the several districts throughout the provinces, can be turned to very beneficial account in various duties connected with the repair and construction of public buildings, the magistrates generally should furnish to the superintendents of civil buildings, and to the officers acting under them, the aid of such number of convicts as can be conveniently spared from other urgent public duties, with a view to diminish the expense of repairing and constructing jails, hospitals, cutcherries, and bridges, in the immediate vicinity of the stations at which works may be sanctioned by government. C. O. No. 196 of vol. 1.

and always in re-
pairs of jails,

2789. In all cases of repairs, alterations, or improvements made in the jails, convict labor is to be used whenever practicable, in preference to free labor:—and in preparing estimates, the cost of each is to be noted. C. O. Insp. Jails *L. P.* No. 16, November 8, 1854.

in which case an ac-
count is to be kept.

2790. To enable the superintendent of civil buildings to judge of the degree in which the actual charges incurred in such buildings are reduced by the employment of convicts in each instance, the magistrates are to keep an accurate monthly account of the total number of convicts furnished by them for the duties in question. C. O. No. 196 of vol. 1.

Control over con-
victs may be vested
in executive officer.

2791. It is competent to government to vest superintendents of roads and other public works, and their assistants, who have the direction of the labor of convicts, with such powers as may from time to time be deemed necessary, to enable them to exert an efficient control over the convicts and the guards employed with them. Reg. IV. 1833.

Feeding, &c. of
convicts in such
case.

2792. Convicts placed under charge of executive officers are to be lodged and fed by them, but are to be supplied with clothing by the magistrates in charge of the jails from which the convicts are detached. C. O. No. 127 of vol. 3.

Rule when con-
victs are required to
be supplied from
other districts.

2793. Whenever it is necessary, under the orders of government, to collect any number of convicts together for the execution of public works, and such convicts cannot be supplied from the sudder station of the district in which their services are required, the superintendent of police is to make application to the government stating—the number of prisoners required,—the work on which it is proposed that they should be employed,—and the districts from which in their opinion they can be most conveniently supplied; and the government is to determine on the expediency of the removal of convicts, and to issue such instructions to the local magistrates as are deemed proper. Reg. XVII. 1816, sect. 18.

2794. But government is averse to the employment of parties of convicts at a distance from the sudder station excepting under very particular circumstances. When therefore the employment of such parties is of so much public use as to render it expedient to detach them, a report is to be made to government. C. O. Sup. Pol. *L. P.* No. 1 of 1844.

Special report to be made in such case.

2795. The government does not wish prisoners to be detached to work at a distance from the jail; as it is incompatible with proper prison discipline to keep the convicts in large gangs under native superintendence at a distance from the magistrate of the district. Improvement in prison discipline is an object of vast political importance, and far superior to the keeping up of roads; and it does not appear that the health of the prisoners can be better preserved on the roads than in the jails.^(a) The ferry fund committees cannot expect, in addition to the annual surplus funds, what would be equal to a further large money assignment in the shape of convict labor. Government does not object for the present to the employment of as many gangs outside the jails as are absolutely required for repairing station roads, whence the convicts can return to be shut up at night; but the great body of the prisoners, especially those sentenced for serious offences, are to be kept strictly employed within the premises,—on remunerative work, if possible,—but, at all events, employed. When this plan is once enforced, a great saving will be effected by discharging the whole or the greater portion of the ticca guards; and there is no doubt that energetic and persevering magistrates will in time devise means for repairing station roads from the profits of convict labor without sending a single prisoner to work outside the walls. C. O. Sup. Pol. *L. P.* No. 766, April 2, 1844.

Employment of prisoners beyond the limits of the jail.

2796. During the unusually heavy rains of 1856, all out-door labor was prohibited, especially where cholera or any other serious epidemic prevailed, except in regard to works of absolute necessity, or which were required for sanitary purposes connected with the station. Magistrates were required to attend at once to every requisition of the civil surgeon for extra clothing, food, and the means of warding off approaching sickness, which he might deem absolutely necessary, unless in the exercise of their general control they should deem it unadvisable. C. O. Insp. Jails *L. P.* No. 51, September 20, and October 6, 1856.

Precautions against sickness caused by out-door labor during the rains.

2797. The practice of employing small gangs of prisoners in places of populous resort, unless the express sanction of government is previously obtained, is prohibited. Hitherto it has been customary to send small parties of 5 or 10 convicts into the crowded streets of cities, wherever the services of free laborers happened to be required. The number of burkundazes in charge of a gang of this strength being never more than two, it is obvious that no attempt to prevent communication between the prisoners and individuals in the surrounding crowd could be successful. The prohibition now issued is directed against the practice of allowing prisoners to work in situations which afford constant opportunities of communicating with passers by, unless the strength of the guard is sufficient for the prevention of this communication, and the nature of the locality such as to admit of its effectual enforcement. The prohibition must be considered to extend absolutely to the employment of

Small gangs of prisoners not to be employed in places of populous resort.

^(a) The average mortality of out-door is probably not less than thirty per cent. greater than that of in-door laboring prisoners. C. O. Inspector Jails *L. P.* No. 51, September 20, 1856.

convicts in a narrow street, or in any market place, while the market is being held ; and also to the simultaneous employment of convict and free labor upon the same work. The introduction of a penal dietary has hitherto been productive of little effect in rendering the punishment of imprisonment more distasteful to those convicts, who are employed beyond the walls, in consequence of the facilities which are still afforded for obtaining prohibited indulgences. The strictest discipline, which is practicable, must be maintained among prisoners, working on the roads. C. O. Insp. Prisons *W. P.* No. 62 of 1855.

How far convicts may be employed on private works.

2798. Magistrates are prohibited from employing convicts under their charge upon any private works whatever, and are enjoined on all occasions to employ them upon public roads or works, under a sufficient guard for their safe custody ; except when during the rainy season they cannot be employed at a distance from the jails, and it is impracticable to employ the whole of them upon the public works, and when it would be expedient to employ a part of them on works combining public utility with private convenience which are undertaken by individuals. In such cases, the magistrate is to report to the session judge, and to state at the same time, any work or works undertaken, or proposed to be undertaken, by individuals, which promise to be productive of public as well as private benefit, and on which a part of the convicts might be employed with security ; and on consideration of such report, the judge is authorized to direct the employment of the convicts in the instances referred to, as may appear to him most advisable. C. O. Nos. 30 and 31 of vol. 1.

Judge to use discretion in such cases with caution ;

2799. The session judge is to exercise this discretion with great caution and consideration, giving always a preference to public works over those of a mixed description. C. O. No. 196 of vol. 1, para. 4.

and to report contravention of rule.

2800. The session judge is to bring under the notice of the magistrate, or if necessary of government, any instances in which he is of opinion that the convicts are employed, without competent authority, on works not strictly of a public nature. C. O. No. 196 of vol. 1, para. 7.

Prisoners not to be let on hire to individuals.

2801. It is entirely contrary to rule to let on hire local convicts to private individuals. C. O. Govt. *Bengal*, No. 362, February 19, 1852. C. O. Insp. Prisons *W. P.* No. 17, August 28, 1848.

Not to be employed in station gardens.

2802. The employment of prisoners to clear away jungle in the private premises at the station cannot be allowed. The magistrate is at liberty however to employ prisoners in cutting down jungle by the road side or in such other places as the medical officer may recommend. The government is decidedly averse to the employment of prisoners in agriculture or horticulture of any kind, the latter of which especially must be an agreeable occupation to many convicts, and by none can be felt as a severe punishment. The convicts are not therefore to be employed in station (branch agri-horticultural) gardens. C. O. Govt. *Bengal*, No. 1528, August 6, 1845.

Suggested rules for working.

2803. The nizamat adawlut circulated in December 1818, certain suggestions for the working and employment of prisoners on the roads, in which also are enumerated the different articles with which the gangs should be furnished. But as they were never made imperative rules, it seems unnecessary to recount them at length. C. O. No. 211 of vol. 1.

2804. In the introduction of jail manufactures, officers in charge of jails should bear in mind—1, that the labor imposed be apportioned in fixed tasks, and be sufficiently severe to keep the prisoners actively employed throughout the day with necessary intervals for rest and meals:—2, that the labor be remunerative; that is, when the labor of each prisoner employed in it gives a clear profit equal to or greater than the entire cost to the state of such prisoner:—and 3, that it be not repugnant to the castes and religious customs of the prisoners. C. O. Govt. *Bengal*, No. 525, June 5, 1843.

Objects to be kept in view in the introduction of manufactures.

2805. C. O. No. 240 of vol. 1 contains an account of the measures pursued by a magistrate for employing the convicts in various manufactures in a manner calculated to give them habits of industry, and to meet in some degree the expense attending their imprisonment.

Employment in various manufactures;

2806. C. O. No. 101 of vol. 3 contains an account of the introduction of mills worked by convicts for the purpose of grinding atta for their own consumption, which system is recommended (in C. O. Nos. 78 *L. P.* and 88 *W. P.* of vol. 3) as a valuable means of providing a good nutritious diet in the place of adulterated food, and as a good way of employing convicts within the jail, in districts in which any considerable number of the prisoners use such food.

in flour mills;

2807. In C. O. No. 114 of vol. 3 *L. P.* is an account of the introduction of a paper manufactory into a jail, and of the process employed in the manufacture. Care should be taken to render all paper manufactured in a jail proof against the attacks of insects. Rice-sizing should be prohibited, as it breeds worms. The admixture of arsenic is recommended. Blue vitriol will keep away worms, but it makes the paper brittle. C. O. Govt. *Bengal*, No. 10, April 27, 1854.

in making paper.

2808. White arsenic should be used in the preparation of paper for the use of the government offices, as it is a more virulent poison than hurtâl, and is therefore of more value in preserving the paper from the ravages of white ants and other insects. It acts as an irritant, when brought in contact with abrasions of the skin, sores, and the mucous membrane; but all bad effects are easily avoided by pounding it under water. Yellow arsenicated paper should be made for sale only when private customers are prejudiced in favor of it, and are not aware of its inferiority to that prepared with white arsenic. C. O. Insp. Jails *L. P.* No. 48, June 12, 1856.

White arsenic to be used in preference to the yellow in making paper.

2809. All weavers, instead of sitting upon the ground, with their feet in holes excavated in the earth, are to be furnished with raised seats. C. O. Insp. Jails *L. P.* No. 31, December 28, 1855.

Weavers to work on raised seats.

2810. The practice of sending out convicts for the purpose of selling articles of jail manufacture is highly irregular. Articles of each kind of manufacture are to be exposed for sale (under the supervision of the darogah) at some convenient place outside, but close to the jail; and the magistrate is to affix there, as well as at the sudder thana, the cutcherries, and other public places, placards in the vernacular, indicating the different articles for sale and their price. C. O. Govt. *Bengal*, No. 718, April 15, 1853.

Convicts not to be employed in hawking manufactures for sale.

2811. When baskets are manufactured in jail, they should be accounted for in the manufacture accounts as any other articles of jail manufacture. If the baskets are used for public purposes, their estimated value should be credited as "value of articles consumed for public purposes," and the amount debited in the usual manner. C. O. Govt. *Bengal*, No. 13, October 18, 1854.

Value of baskets made and used by convicts to be credited.

Jail darogah's
commission on pro-
ceeds of manufac-
tures.

2812. Officers in charge of jails (except Alipore jail) are authorized to pay to the jail darogahs at the close of each official year a commission of 25 per cent. on the profits of the manufactures carried on under their superintendence. Such payments are subject to the correction of the accountant to the government of Bengal; and the amount in each instance is to be reported to the secretary to government in the form given below. (a) This commission is strictly limited to the proceeds of articles actually sold, or to the bonâ fide value of those consumed for public purposes; and articles remaining in store at the close of the year are not to be included in the calculation. The magistrate is to obtain the sanction of government before expending the balance of 75 per cent. on objects of local utility. C. O. Govt. Bengal, No. 1058, May 20, 1846; and No. 1155, June 30, 1851.

(a) PART 1.—Statement of out-turn of manufactures in the jail of _____ during the year _____.

	Carpets	Blankets	Cloth.	Paper.												Total.
Receipts on account of products sold,																
Value of ditto consumed for public purposes,																
Total receipts,																
Add value of articles in store at the close of the year,																
Grand total,																
Deduct value of articles in store at the close of the preceding year, ..																
Gross receipts on account of current year,																
Charges incurred during the current year,																
Excess of receipts,																
Excess of charges,																

PART 2.—Abstract of prisoners' annual cost.

1.	ANNUAL EXPENDITURE ON ACCOUNT OF							9.	10.
	2.	3.	4.	5.	6.	7.	8.		
Daily average of criminal prisoners of all classes in jail and hospital.	Rations.	Money allowance.	Clothing.	Fixed establishment.	Extra guards.	Hospital charges.	Contingen- cies.	Total cost.	Annual cost of each prisoner.

PART 3.—Abstract of prisoners' employment during the year _____ and of their earnings.

DAILY AVERAGE OF PRISONERS.								NET PROFITS ON ACCOUNT OF PRISONERS.									
1.	2.	3.	4.	5.	6.	7.	8.	In Column 6.		In Column 7.		In Column 8.					
Total sentenced to labor.	Inefficient from age or disease.	Employed as jail servants.	Working on roads.	Miscellaneous works.	Hired by department of public works.	Hired by any other department.	Employed in manufactures.	9.	10.	11.	12.	13.	14.	15.	16.		
								Total.	Annual average of each prisoner.	Total.	Annual average of each prisoner.	Total.	Annual average of each prisoner.	Total receipts as per columns 9, 11 & 13.	Annual average earning of each prisoner in column 1.		

Resolution Govt. Bengal, January 29, 1851; and C. O. Govt. Bengal, No. 1485, August 9, 1851.

2813. No commission is allowed to jail darogahs upon amounts received from executive or any other public officers on account of labor of convicts hired out to them. C. O. Govt. Bengal, No. 1177, June 30, 1851. Not to be calculated on sums received from hire of convicts.

2814. The cost of any extra establishment, required to keep the accounts of jail manufactures, is to be defrayed by the darogah out of his percentage. C. O. Govt. Bengal, No. 1902, October 30, 1851. Cost of extra establishments.

2815. The jail manufacture funds are to be expended in the conservancy and improvement of the sudder station, and not on works in the interior of a district, for which the ferry funds are available. C. O. Govt. Bengal, No. 1, August 11, 1853. Application of profits of manufactures.

2816. In all cases, in which prisoners sentenced to labor are transferred from the subdivisions to the station jail, a proportion of the realized profits of the manufactures carried on in the jail is to be assigned to the sub-division, calculated according to the proportion which the laboring prisoners received from the sub-division may bear to the total number of laboring prisoners in the station jail. C. O. Insp. Jails L. P. No. 40, April 23, 1856. Proportionate share of profits to be assigned to sub-divisions.

2817. The magistrates are authorized, when they deem it advisable, to allow to each prisoner, as an incitement to industry, one half of the monthly produce of his monthly labor, over and above all allowances he would otherwise receive.(a) C. O. No. 252 of vol. 1. One half of produce of labor may be allowed to prisoners.

2818. Quarterly returns are to be furnished to government showing in detail the manner in which all convicts not engaged in manufactures have been employed, and the estimated value of their labor, in the annexed form.(b) The value of the prisoner's Quarterly returns.

(a) It would seem that this rule has been virtually repealed,

(b) Statement showing the employment of non-manufacturing prisoners in the jail of , and the estimated value of their labor, for the Quarter of .

1.	2.	3.	4.	5.							
Aggregate of the daily total number of laboring prisoners.	Aggregate of the daily total number employed in manufactures.	Aggregate of the daily total number not employed in manufactures.	Aggregate of the daily total number exempted from labor on account of sickness and holidays.	Employment of prisoners entered in column 3, and the estimated value of their labor.							
				Description of work.	No. of prisoners.	Daily rate per prisoner.			Value of labor.		
						Rs.	As.	P.	Rs.	As.	P.
				Repairing roads,							
				Digging tanks,							
				Cleaning the station, ..							
				Attending hospital, ..							
				Employed as jail servants,							
				Ditto as cooks,							
				Ditto as —, ..							
				Ditto as —, ..							
				Total, ..							
				Average earning of each prisoner,							

N. B. The number entered in each of these columns is to be the aggregate sum formed by adding together the totals of each day during the quarter.

Whenever the value of the labor of prisoners employed as jail servants is not uniform, there should be separate entries for the different rates; as e. g.

Employed as jail servants,

00 Cooks at 2 annas.

00 Other servants at 1 anna.
and so on.

The value of the prisoners' labor is to be estimated with reference to the rate at which each description of labor is remunerated in the district.

labor is to be estimated with reference to the rate at which each description of labor is remunerated in the district. C. O. Govt. *Bengal*, No. 165, January 20, 1852, and No. 2, September 6, 1853.

Rules for more effectually guarding prisoners laboring within jails.

2819. Two cases of assault with severe wounding having been perpetrated in jail work-shops, the following instructions were issued to all officers in charge of jails, *W. P.* Although the implements commonly used in the manufactures, which are carried on within the jails, are not capable of being converted into weapons of offence with such murderous effect as the spades, pick-axes, &c., which are entrusted to convicts working on the roads, yet it must be borne in mind, that the greater strictness of the discipline within the walls, and the deprivation of all unauthorized luxuries and indulgences which are attainable by out-lying gangs of prisoners, renders the punishment of those confined within the prison far more severe than that which is enforced beyond its precincts. With increased severity of punishment, we must expect, and be prepared for, a more determined spirit of opposition on the part of the convicts, which must be met by a corresponding increase of vigilance and caution on the part of the guards. There are however strong reasons for apprehending, that the class of men now employed as contingent guards will never become trustworthy or efficient discipline officers. Their pay is so small, that no man possessing the requisite qualifications for discharging the duties of intramural guards would willingly undertake them for the same amount of pay, which he could obtain elsewhere without subjecting himself to the irksome confinement and personal risk which service in a jail must inevitably involve. It is, therefore, necessary to endeavour to obtain the services of persons of greater respectability by holding out such inducements of immediate high pay, with prospect of rapid promotion, as may more than counterbalance the disagreeable nature of the duty, and render the loss of appointment a serious punishment which would not lightly be risked. The following rules therefore have been sanctioned regarding the pay of contingent burkundazes employed in guarding prisoners at work within the jail walls. It must however be distinctly understood that no contingent burkundaz guarding prisoners at work beyond the jail walls will be entitled to the higher rate of pay. Whenever intramural labor is substituted for road or other out-door work, to an extent which enables the officer in charge of the jail to reduce his contingent guard from one man to every 5 convicts to one man for every 10 or more convicts, the rates of pay assigned to the contingent burkundazes permanently and continuously employed within the walls of the jail (designated the intramural contingent or discipline guard) are to be for one-third of their number 7 rupees, and for two-thirds 6 rupees per mensem. For every 10 burkundazes there is to be a duffadar upon 10 rupees; and for every 20 burkundazes a jemadar upon 15 rupees per mensem: and whenever the number of working prisoners permanently confined within the walls exceeds 250, there is to be a higher grade of officers to whom the general supervision of the work-shops shall be entrusted. The number and salaries of these officers will however be decided in each case with reference to the peculiar circumstances of the jail, and under the special sanction of government. In selecting the contingent guard for employment within the jail, it is necessary that care should be taken to appoint only those who have distinguished themselves by good service.—It must be remembered that these are the men upon whom the discipline, which is maintained within

Rate of pay of intramural contingent or discipline guard.

Selection of contingent guard.

the jail, must in a great measure depend. They are constantly with the prisoners, and should be cognizant of all that passes. If they are trustworthy and vigilant serious breaches of discipline can hardly occur; if they neglect their duty, the utmost watchfulness on the part of the magistrate will be insufficient to counteract the pernicious effects of their misconduct. It is worthy of consideration whether the higher pay now allowed to intramural guards may not be beneficially held out as a reward to the best behaved men of the permanent guard. It is not desirable that a discretionary power of selecting the best men, wherever they may be procurable, should be taken from the officer in charge of the jail; but by promoting the permanent guard, where practicable, the advantage of having trained men throughout the jail will be secured; and, if any out-break among the prisoners should occur, the disciplined force which could be brought against them would be materially strengthened. C. O. 1^{ns}p. Prisons *W. P.* No. 66 of 1855.

2820. Convicts at work on the roads, or in other public places out of jail, are to be employed, as far as possible, collectively, and never under the custody of a single guard; but are to be guarded by as many burkundazes as can be spared from other duties for the purpose. C. O. No. 18 of vol. 1.

Guarding of convicts employed on the roads.

2821. No prisoners are to be permitted to stop in a bazar or village. The prisoners are not to be permitted to have any intercourse with their female connections, or to receive any articles from them without the knowledge of the officer commanding the guard. The sepoy and burkundazes in charge of the prisoners, either at work or elsewhere, are to be enjoined to prevent, as much as possible, any person holding communication with the prisoners; and are always to report to the jailor when any improper or suspicious communication appears to have taken place, that the party may undergo a strict examination before his being shut up on re-admission into jail for the night. Jail rules, sect. 4, paras. 8, 9, and 10.

Not to be allowed to communicate with other persons.

2822. Persons sentenced to imprisonment by the magistrates are to be employed separately from prisoners convicted of crimes before the sessions courts, when at work on the public roads or other public works. C. O. No. 45 of vol. 1.

Certain prisoners to be separated during work.

2823. As to the mode of employment during imprisonment in all cases of misdemeanor, it is to be assumed as the principle on which the magistrates are to act, that in these cases, the reformation of the offender is the principal end in view, and not public exposure by way of example; the latter object being reserved for higher crimes. Accordingly, in each class of cases, a distinction should be made as to private and public labor: the private labor for cases of misdemeanor and minor offences, to consist of beating soorkee, making baskets, mats, bags, or any thing of easy fabric, in the jail or in some shed near it; while labor on the public roads, or on public works, is reserved for offences of more serious cast. It is not intended by these instructions, to lay down precise rules as to the mode of employment to be pursued by the respective magistrates; but to state the general principle of private labor, which it is desirable that they should adopt, leaving them to follow it up in such mode as their discretion, under local circumstances, may point out as practicable.

And distinction to be made as to public and private labor.

It rests with the magistrates, in convictions before themselves for petty theft, to direct private or public labor as the circumstances may seem to require ; adopting the first, however, in all practicable cases. C. O. No. 238 of vol. 1.

But discretion
allowed to magis-
trate.

2824. As there may be districts in which a strict adherence to the above suggestions is not advisable, the several magistrates are to exercise a sound discretion in awarding either description of labor, public or private, to the prisoners under their charge : and may employ them in manufactures or on the roads, as may seem most applicable to each case, without reference to the nature of the offence of which they have been convicted, provided their sentence has not specified any particular species of labor. C. O. No. 255 of vol. 1.

Rules for hours
of labor ;

2825. All the prisoners liable to hard labor are to be brought out of the jail by sunrise ; and they are uniformly to be conducted back to the jail soon enough to allow of their taking their evening meal, and of being mustered, searched, and properly secured before it is dark. Jail rules, sect. 4, para. 11.

which is to be suit-
ed to the strength
of the convicts.

2826. Labor is to be exacted with due discrimination in regard to the seasons of the year and to the strength of the convicts. It is to be moderated or entirely remitted during an unusual degree of sickness. One hour's rest from labor is to be allowed in the middle of the day. On the first symptoms of illness of the convict during working hours, he should be sent immediately to the hospital. A convalescent period is to be allowed, at the discretion of the medical officer, to all convicts discharged from hospital. Some lighter labor than working on the roads should be devised for prisoners 60 years of age and upwards. Frequent inspection of the prisoners is to be made by the medical officer previous to their leaving jail, with a view of detecting prisoners laboring under illness, and of pointing out those incapable of much bodily exertion. C. O. No. 145 of vol. 3. *L. P.*

Special gang to
be constituted for
infirm and con-
valescent prison-
ers.

2827. With a view of better adapting labor to the physical power of the prisoners, by separating the weak from the able-bodied, an "infirm and convalescent gang" is to be constituted, consisting—1. of those prisoners who from age or bodily infirmity are physically unable to perform hard labor, who will be permanent members of the gang :—2. of those who are suffering from temporary debility, not amounting to disease, which requires admission into hospital :—3. of those who have been discharged from hospital as convalescent, and are unable for some days to perform hard labor. These prisoners are not to be excused *all* labor ; some light work should be apportioned to them, suited to their strength, within the precincts of the jail. A register should be kept of such prisoners in the following form :—

Register No. of prisoner.	Name of prisoner.	Date of admission.	How long to remain.	Date of discharge.	Order of civil surgeon or ma- gistrate.
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and none should be placed in, or discharged from, this gang, without the special order and signature of the magistrate, or under the directions of the civil surgeon. C. O. Insp. Prisons *W. P.* No. 5, July 1, 1847.

2828. The attention of the magistrate is particularly urged to the practice of meridian intermission of labor, of longer or shorter duration according to the season of the year; and to the system of classifying prisoners according to physical strength, a distinction being maintained between the kind of work assigned to the weak and aged, and that given to the robust. These precautions are closely connected with the internal economy and discipline of the jails, and well calculated to promote the health of those confined within their precincts. The magistrates are expected to communicate freely with the medical officers in charge of jails on these points, and to exercise a sound discretion in allowing a cessation from labor during the heat of the day, and in proportioning the amount and description of labor to the physical ability of those from whom it is exacted. C. O. No. 168 of vol. 3. *W. P.*

Meridian intermission of labor.

Labor to be fitted to physical strength.

2829. Except on urgent occasions, when the convicts engaged in the execution of any particular work cannot be dispensed with, they are not to be employed on Sundays; and, at all events, a part of every Sunday is invariably to be allowed to them and to their guards for the purpose of cleanliness. The magistrates are at the same time to be careful that this indulgence is not abused by any misbehaviour, and are to adopt such measures as appear best calculated to secure the due attainment of the object intended. It is also at the discretion of the magistrate to authorize an intermission of labor at the principal Mahomedan and Hindoo festivals, as far as appears indispensably necessary to enable the convicts to perform their religious ceremonies respectively, but not to any further extent than may be requisite for this purpose. C. O. No. 183 of vol. 1.

Not to be employed on Sundays; and native holidays may be allowed.

2830. Convicts under sentence of imprisonment for life in the Alipore jail, are not to be sent to work on the roads while they remain in the zillahs; but are to be kept in strict custody in the jails, until they are removed to the place of their ultimate destination. C. O. No. 117 of vol. 2.

Alipore jail.

Persons sentenced to imprisonment in, not to be worked on the roads before removal to.

2831. Persons sentenced to imprisonment for life in Alipore jail are on no account to be permitted to quit the area attached to the jail, except in cases in which sickness or accidents require that they should be taken to the hospital attached to the jail, and they are to be uniformly re-lodged within the jail whenever their health admits. Reg. XIV. 1811, sect. 2, cl. 3.

Persons imprisoned for life not to leave the jail;

2832. Persons sentenced to imprisonment for life in the Alipore jail are to be employed in the manufacture of articles for which a constant demand exists at the presidency, or in such other labor as the superintendent of the jail directs, subject to any instructions with which he may be at any time furnished by government. Reg. XIV. 1811, sect. 2, cl. 4.

but are to be employed in manufactures therein;

2833. But the superintendent may employ convicts sentenced to imprisonment for life in that jail, and subject to hard labor, in the repair of the public roads, or in other public works beyond the area of the jail. He is to be careful to exercise this authority with due regard to the character and circumstances of the convicts, and to adopt suitable precautions to guard against their escape. Reg. IV. 1823, sect. 7.

but the superintendent may employ them on the roads.

SECTION VIII.

OF EDUCATION OF PRISONERS.

Education of prisoners furthers the object of imprisonment.

Course of study prescribed for agriculturists ;

felons ;

and life prisoners.

Education is not to involve any relaxation of sentence.

Instructors and monitors.

Alphabetical and multiplication tables.

2834. A system of imparting the elements of sound education to convicts under sentence of imprisonment, was introduced under the orders of government uniformly into all the jails of the Western Provinces under the following rules. The primary object of punishment is to deter from the commission of offences by the infliction of a penalty, which may prove so highly distasteful as to operate more forcibly than the temptation to crime ; but, if in addition to this sense of fear, and without lessening its effect upon the community at large, any change can be wrought in the moral constitution of the offender, which may place him beyond the future influence of those inducements to crime, to which he previously yielded, the aim of the penal system will be most completely attained. The annexed scheme framed by the visitor general of schools contains a course of study adapted to each class of the prisoners. Under it the agriculturist, who has committed no offence involving a degree of moral turpitude, but has been sentenced to imprisonment for participation in party frays, is to receive the education which will confer the greatest amount of advantage after his release. The felon, on the other hand, after being sufficiently grounded in the elements to enable him to learn after release whatever may be most useful to him, will thenceforth, during his confinement, be restricted to the perusal of treatises, which will, it is to be hoped, tend to convince him of the advantages which are attained by refraining from offences injurious to society, and by obeying those laws which conduce to the general welfare. A special provision is, however, also made for giving suitable instruction to agricultural prisoners who may be placed in this classification, as not being entitled to admission into class 1st, alluded to above. In those jails in which life prisoners are confined, the restrictions to the acquisition of knowledge may be greatly relaxed in their favor. These men have in every case been convicted of the most heinous offences, and are dead to society ; but much may be done in the improvement of their moral sense to render them well conducted and useful inmates of the prison, within which their future lives are to be passed. The method by which the education is to be imparted does not contemplate the relaxation of any part of the sentence passed upon the criminal, which is, on the contrary, strictly to be refrained from, but merely the employment of that portion of his time, which is not occupied in hard labor, in the acquisition of knowledge which will prove a source of future and permanent benefit to himself. The first object in introducing the system is to provide the necessary instructors. It is probable that monitors capable of teaching reading and writing will be found among prisoners who have been sentenced for affrays, or other crimes involving no moral turpitude. The mode of teaching should be by assigning to each monitor a class of suitable size ; and the elements of reading, writing, and arithmetic will be best communicated by the use of the large alphabetical, and multiplica-

tion tables, which on application are provided by the central prison at Agra. It is absolutely necessary to the uniformity now sought to be introduced, that no books be admitted for educational purposes into the jail which are not found in the annexed tabular statement; and that constant attention be directed to the restriction of the use of the books, which are sanctioned, to the particular class of convicts for which they are designed. These books are furnished on application being made to the curator of government school-books at Agra, and should be indented for in Hindee or Oordoo in accordance with the prevalence of either language as the vernacular dialect of the district. The cost of books, alphabetical and multiplication tables, writing materials, &c., and, when necessary, the pay of instructors, is to be defrayed from the proceeds of convict labor, from which source officers in charge of jails are authorized to expend 5 rupees per mensem for every hundred prisoners under instruction.

Uniformity absolutely required.

Books.

Expense to be defrayed from proceeds of jail manufactures.

Course of Study for Jail Schools.

HINDIE.

	1st Class.	2nd Class.	3rd Class.	4th Class.	Remarks.
I.	Akshara dīpiku (Primer); Bidyarthi ki pratham pustak p. p. 10, 13, 20, 33; multiplication table (up to 16).	Ganit prakāsh Part I (Arithmetic); Kisanopadesh (advice to cultivators); Sūrajpori ki Kahani (a village tale).	Patra malika (letter writing); Kshetra Chanarika Part I (Mensuration); putwari's manual; map of the district (his own), and of Hindustan; Gouthan Sitla (a tale on vaccination).	Kshetra Chandrika Part II; Gramya Kal-padrum (explanation of village institutions, accounts, &c. &c.); Shuddhidarpan (on cleanliness); Khagolsār, (solar system); treatise on cholera.	This course is for the instruction of agricultural term prisoners, who have been imprisoned for offences which are not ignominious.
II.	Ditto.	Ganit prakash Part II; Dharm singh ka vrittānt (a moral tale); Buddhīphalodaya (do.)	Patra malika, (letter writing); Gyan chālīsī bibaran (moral couplets with commentary); Satya Nirūpan (on truth); map of the district (his own), and Hindustan; Gouthan Sitla.	Sikrhū manjari (self improvement); Shuddhidarpan; treatise on Cholera; Khagolsār.	This course is for the use of all other term prisoners. Any agriculturists who may be found in this division may be permitted to learn the treatise on mensuration, the putwari's manual, the explanation of village institutions, accounts, and the map of his own district, on being promoted to the 3rd class.
III.	Ditto minus multiplication table.	Dharm singh ka vrittānt; Buddhīphalodaya.	Gyān chālīsī bibaran; Satya Nirūpan.	Ditto ditto and in addition, when the above are finished, Ishwarta Nidarshan (natural theology) &c.	This course is for life prisoners.

URDU.

	1st Class.	2nd Class.	3rd Class.	4th Class.	Remarks.
I.	Tashīl ut-tālim, (primer); multiplication table (up to 16).	Mubadi-al-hisab (arithmetic) Part I; Pand-nāmāh-i-kā-htkārān, (advice to cultivators); Kissah-i-Sūrājpur.	Inshāi Khirad afroz; Misbah-ul-Masūhat (mensuration) Part I; map of the district, and Hindustān; put-wāri's manual; Gouthan Sitla.	Misbah-ul-Masahat Part II; Kitāb-halat-i-dehl (explanation of village institutions, accounts, &c.); Khulasah-i-Nizām-i-Shamsi (solar system); Tālim-ul-nafs (self improvement); treatise on cholera.	As above in Class I.
II.	Ditto.	Mubadi-ul-hisab Part I; Kissah-i-Dharm Singh; Kissah-i-Subuddhi.	Inshai Khirad afroz; Tālim-ul-nafs; map of district; Gouthan Sitla.	Khulāsah-i-Nizam-i-Shamsi; Kheyālāt-us-Sūnaya; Muzhari Kudrat; treatise on cholera.	As above in Class II.
III.	Ditto minus multiplication table.	Kissah-i-Dharm Singh; Kissah-i-Sa-buddhi.	Tālim-ul-nafs.	Kheyālāt-us-Sā-naya; Muzhari Kudrut.	As above in Class III.

C. O. Insp. Prisons *W. P.* No. 56, July 11, 1854.

Statements to show what instruction prisoners have received, and the proportion of previous convictions.

2835. Magistrates are required as soon after the close of the calendar year as possible to fill up and return to the inspector of prisons the subjoined statements, which are intended to exhibit the extent to which convicts have received instruction, and the proportion of prisoners who have previously been convicted.

Statement shewing the degree and extent of education among the convicts of the district on the 31st December, 185 .

1.	2.	3.	4.	5.	6.	7.	8.	9.
Name of District.	Number of convicts.	Number of those who can read and write.	Number of those who can read only.	Number of those who can write only.	Number of those who can neither read nor write.	Number of those who have learned since their conviction		
						to read.	to write.	to read and write.

A. B.,
Magistrate.

Statement shewing the number of prisoners in the district who have been previously convicted.

1.	2.	3.	4.	5.	6.
Name of district.	Number of prisoners.	Never before convicted.	Once convicted.	Twice convicted.	Frequently convicted.

A. B.,
Magistrate.

C. O. Insp. Prisons *W. P.* No. 69 of 1855.

SECTION VIII.

OF JAIL OFFICERS.

2836. The magistrate is empowered to appoint fit persons to the situations of jailor and other subordinate officers of the criminal jail, and to remove such officers for misconduct, incapacity, or other sufficient cause, without reference to other authority. Reg. XVII. 1816, sect. 7, cl. 2.

Magistrate may appoint and remove officers,

2837. As the magistrate is responsible for the safe custody of the dewanny as well as the foudjaree prisoners, the appointment and removal of native officers attached to both jails is vested exclusively in him. Const. No. 442.

of both civil and criminal jails.

2838. The magistrate is to record upon his proceedings the grounds upon which any such officers are removed by him; and to select proper persons to fill all vacancies in the situations of such officers; and to continue in office the persons appointed, whether by himself or by his predecessors, whilst they discharge the duties assigned to them with diligence and integrity. Reg. XVII. 1816, sect. 7, cl. 3.

Grounds of removal to be recorded, and proper persons selected.

2839. The magistrate is to report to the session judge whenever he appoints a jailor, specifying his name, age, past employments, character, and qualifications. Reg. XVII. 1816, sect. 7, cl. 4.

Report of appointment to be made to judge.

2840. Security should be taken from jail darogahs according to the amount or value of the money or property that may be entrusted to them. The rules laid down for taking security from treasurers or nazirs* are to be observed; but the annual report of the revision of the security is to be forwarded to government. C. O. Govt. *Bengal*, No. 1121, September 10, 1850.

Darogah to give security.

* See para. 2510.

Officers dismissed may petition the judge;

2841. In the event of a jailor deeming himself aggrieved by any order passed by a magistrate with respect to his dismissal from office, he is at liberty to present a petition to the session judge, setting forth the circumstances of his case and grounds of complaint. Reg. XVII. 1816, sect. 7, cl. 5.

who is to call for proceedings, if he thinks proper.

2842. On the perusal of such petition the judge may, if he deems proper, require the magistrate to submit the proceedings holden on the case for his inspection accompanied by any explanation in the English language, which he is desirous to offer. Reg. XVII. 1816, sect. 7, cl. 6.

No appeal lies of right to judge or other authority.

2843. The control of jail establishments being by Act XVIII. 1844 vested exclusively in the government, the dismissal or suspension of any person holding an office in the jail establishment by the magistrate has been declared final in the Western Provinces; and no appeal lies of right to the session judge or any other authority. If the inspector of prisons however or the government see cause for interference, the magistrate's sentence will be liable to revision. Govt. Order *W. P.* No. 3824, September 21, 1853.

Orders of magistrate final; but judge may submit proceedings to government.

2844. Orders of magistrates for the dismissal of officers of the jail establishment are final: but if, after consideration of the papers furnished, the session judge is of opinion that the powers, vested in the magistrate by these provisions, have been perverted, he is to submit the proceedings to government. Reg. XVII. 1816, sect. 7, cl. 7. C. O. Govt. *Bengal*, No. 1072, October 10, 1844, para. 8.

Session judge or nizamut adawlut may order dismissal in certain cases.

2845. The above provisions do not preclude the session judge or the nizamut adawlut from ordering the removal of any jail officer, who is convicted of a criminal offence declared punishable by dismissal from office, or, though not so expressly declared, if the conduct of such native officer appears, from any proceeding before the sessions court or the nizamut adawlut, to be such as to require his removal from the public situation held by him. Reg. XVII. 1816, sect. 7, cl. 8.

Discontinuance of temporary establishments.

2846. Report is always to be made to the inspector, when a temporary establishment, which has been sanctioned for an indefinite period, is discontinued. C. O. Insp. Jails *L. P.* No. 49, June 24, 1856.

Magistrate to prevent maltreatment of prisoners by native officers.

2847. The magistrates are to be careful to prevent any maltreatment of prisoners by any of the native officers attached to their respective jails, or in charge of prisoners employed on the public roads. All complaints of prisoners against the officers having charge of them are to be immediately inquired into by the magistrates; and, if proved to be well founded, the offenders are to be liable to immediate dismission; besides a fine not exceeding one month's salary, or imprisonment not exceeding six months. Reg. XIV. 1816, sect. 9, cl. 2.

Military guards how to be punished.

2848. It is not of course intended that the foregoing rule should be considered applicable to any military guards, sepoy, or officers, or to persons of any denomination, who are subject to a military tribunal. In the event of any such persons being guilty of a neglect of duty, or other misconduct involving an offence cognizable by a court-martial, whilst

employed in the custody of prisoners, the magistrate is to continue to observe the rule prescribed for such cases in sect. 10, Reg. XI. 1806.* Reg. XIV. 1816, sect. 9, cl. 3.

2849. Jailors are included in the list of public servants entitled, under the existing pension rules, to a superannuation pension. C. O. No. 179 of vol. 3.

* v. paras. 289 and 290.

Jailors are entitled to pension.

2850. The strength of the jail guard is determined on a calculation of 4 men to every sentry posted at night, and one-third over and above as a reserve and for drill. To every 25 men, and for every broken number less than 25, there will be a duffadar; and for every jail one jemadar and one naib jemadar. The extra guards required for laboring prisoners are to be ordinary burkundazes. The men of the guard are to be armed, accoutred, and clothed, as the men of the late police battalion. The pay of the guard is to be—jemadar 16, naib jemadar 12, duffadar 8, and sepoy 5 rupees. But no officer is to be placed on the guard who is not well acquainted with the drill; and no sepoy is to receive more than 4 rupees, till he is pronounced to be sufficiently instructed therein. Indents for such arms and accoutrements, as are absolutely necessary, are to be made once in the year, and the cost of these articles is to be borne by the jails. Indents for ammunition should be at the rate of 30 ball cartridges and 80 of blank ammunition per man per annum. The one-third of the guard, who are off duty, are to be regularly drilled by their own officers, or by drill instructors drawn from regiments at the same or neighbouring stations. If such drill instructors are required, they should receive their marching batta during the time they are employed; and this may be charged in the contingent bill of the jail. The men should be taught the manual and platoon exercise, and only the simplest manœuvres; and should always have target practice. The whole expense of the jail guard is to be charged against the jail; and the guard is entirely subordinate to the inspector of prisons in every respect. C. O. Insp. Prisons *W. P.* No. 8, October 27, 1847.

Formation of jail guards.

Arms.

Pay.

Indents.

Drill.

2851. Jail burkundazes when sent in charge of prisoners to districts other than that in which they are employed, are to receive travelling allowance at the rate of three-tenths of their salary. C. O. Govt. *Bengal*, No. 1307, July 4, 1853.

Travelling allowance of burkundaz.

2852. Whenever a magistrate has occasion to submit an application for leave of absence from a medical officer in charge of the jail or station, he is at the same time to report what arrangements it is proposed to make for the charge of the medical duties during his absence, and whether he considers those arrangements sufficient. C. O. Govt. *Bengal*, No. 5, November 10, 1853.

Applications for leave of absence from medical officer in charge of jail.
Expense.

2853. Every magistrate is empowered, on the recommendation of the civil surgeon, and without reference to government, to grant leave of absence to any native doctor, attached to a station or sub-division subordinate to him, for any period not exceeding six months on private affairs, and not exceeding one year on account of sickness duly certified. Application for leave of absence is to be made by the native doctor to the civil surgeon of the district, who, if he think proper, may refuse the application. If, on the other hand, the civil surgeon is of opinion that the leave, or any part of it, should be granted, he will forward it to the magistrate of the district, enclosed in a letter from himself, stating the cause of the appli-

Rules for granting leave of absence to native doctors.

cation and the grounds of his recommendation. The magistrate may refuse to give leave on private affairs, if it cannot be granted without public inconvenience. Leave granted by a magistrate under this rule is to be reported to the superintending surgeon of the division. A native doctor absent from his station on leave, from whatever cause, shall suffer, during the period of his absence, a deduction of so much of his salary, not being less than one half, as may be requisite to procure the services of an efficient substitute. If the absence of a native doctor require that provision should be made for the discharge of his duty during his absence, or if a vacancy occur in any other way, the magistrate is to apply to the superintending surgeon for the appointment of a person to fill the situation either temporarily or permanently as the case may be; and the superintending surgeon, or, if necessary, the medical board, is hereby authorized to comply with such application. *Govt. Bengal*, No 47, Dec. 15, 1852.

Their emolument.

2854. Recommendations made by the magistrates touching the emoluments of the subordinate medical officers, are to be submitted, through the regular channel, to the medical board direct. C. O. No. 63 of vol. 3. *W. P.*

Pay of native doctors of secondary class.

2855. If a native doctor of the secondary class is attached to a jail or civil station, in cases where the fixed establishment does not provide the full amount of pay to which the native doctor is entitled by his standing, the magistrate is to charge such amount of pay, as he may be entitled to, in the establishment bill; specifying that the officer charged for is a native doctor of the secondary class, and quoting the date of the order by which he is attached to the station. C. O. *Govt. Bengal*, No. 14, November 1, 1854.

Removal of native doctors from appointment.

2856. Native doctors are not to be held liable to summary removal from their appointments by the local authorities, except with the concurrence of the superintending surgeon of the circle. On the occurrence of any vacancy in that class of public servants, the civil surgeon, to whom the native doctor is immediately subordinate, should report the same to the superior medical authorities, with a view to the vacancy being supplied. C. O. *Govt. Bengal*, No. 30, November 14, 1855.

SECTION IX.

OF CUSTODY OF PRISONERS UNDER EXAMINATION.

Prisoners to be sent to the jailor with a chalan.

2857. On the apprehension of prisoners at the sudder station, as well as on the arrival of prisoners sent in by the police darogah, they are to be delivered over to the jailor with a chalan, under the signature of the magistrate or his assistant, specifying their names, the charge or information on which they have been apprehended, in what apartment of the jail,

or with what description of prisoners, they are to be confined, and whether they are to be secured with ropes or fetters. Jail rules, sect. 2, para. 3.

2858. The jailor is to carry the terms of the chalan into execution, and is to take every possible precaution for preventing the prisoners under examination from associating and conversing with the convicts in the jail. Jail rules, sect. 2, para. 4.

Jailor to execute the terms of the chalan.

2859. All prisoners detained under examination are to be confined in a distinct apartment, or apartments, of the regular jail. Jail rules, sect. 2, para. 2.

To be confined in a distinct apartment.

2860. Prisoners are not to be kept in the nazir's house, until they find security, or until orders are passed upon the report of the darogah accompanying such as are sent in by the police. C. O. No. 47 of vol. 2.

Not to be kept in nazir's house.

2861. When accused persons, who have confessed in the mofussil, are forwarded by the police, they should not be allowed to mix with the prisoners in the common jail previous to their examination by the magistrate, lest they should be put upon their guard by them, and consequently decline to make any confession or discovery. On the other hand, the magistrate must be watchful that prisoners are not subjected in the jail, or other places of confinement, to any continuance of the improper means which may have been used by the police to extort confessions. C. O. No. 73 of vol. 1.

To be kept separate from all others, if they have confessed in the mofussil.

2862. As the only object of keeping in custody prisoners committed to the sessions is to secure their appearance at the time of trial, the magistrate is not to confine in fetters any such person who is charged with a bailable offence, and committed to prison from inability to find bail; or who, though not admitted to bail, is not charged with a heinous offence, such as from the circumstances and nature of the case, considered with the prisoner's condition of life, appears to render the use of irons indispensably necessary for his secure custody. C. O. No. 40 of vol. 1.

Fetters to be imposed only in heinous cases;

2863. Under this rule prisoners committed on a charge of burglary may be confined in irons, as that offence is of a heinous nature; but the magistrate should use his discretion in such cases, according to the nature of the offence charged, and the character and circumstances of the individual prisoner, having in view merely to ensure his safe custody. C. O. Nos. 206 and 210 of vol. 1.

and not always in such cases;

2864. This measure, however, should be resorted to only in extreme cases, or where the prisoner is of a character so dangerous as to render the imposition of fetters absolutely necessary to his safe custody; and the magistrate is always to record on his proceedings of commitment his reasons for resorting to the measure, whenever he deems it necessary to place fetters on a prisoner previous to his trial. C. O. No. 32 of vol. 2.

only in special cases.

2865. Whenever the attendance of any prisoners in the jail is required at the magistrate's cutcherry, the nazir is to send a list of their names, under his signature, to the jailor; and the jailor is to deliver the prisoners mentioned in the list to the charge of the officer sent for them, with a sufficient guard for their security. Jail rules, sect. 2, para. 5.

Rule when prisoners are required in the magistrate's court.

And a register of prisoners under examination.

(a) *Register of warrants of release, sentence, and commitment, issued daily by magistrate and his subordinates.*

[illegible]

Register of prisoners under examination and commitment for trial.

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.
Date of admission into jail.	No. of case in magistrate's register.	Name of prosecutor.	Name of prisoner.	Crime charged.	Age.	Father's name, caste, and profession.	Residence.	Date of commitment; abstract of final order, with the date, and by whom passed.	Chalan from what thana.	No. of days under trial.	Amount cost of diet.	Remarks.

SECTION X.

WARRANTS FOR EXECUTION OF SENTENCE.

2867. A warrant of release should always be issued by the session judge on the acquittal of a prisoner, even though he has been convicted in another case, in order to preserve regularity in the office of the magistrate. N. A. R. vol. 2, page 10.

Warrant to be issued for release.

2868. In all cases in which the judge passes final sentence without reference, the warrant to the magistrate for carrying the sentence into execution should be issued within two days from the close of the proceedings. C. O. No. 119 of vol. 2.

Judge to issue within 2 days after sentence.

2869. All warrants for the execution of sentences should be addressed to the chief magisterial authority of the district, whether he is denominated magistrate, or joint magistrate, although the prisoners were committed for trial by subordinate officers exercising the full powers of magistrate. Const. No. 847.

All warrants to be addressed to the magistrate.

2870. The session judge is invariably to insert in the warrants in words as well as in figures the period of imprisonment, to which the prisoners thereby affected are sentenced; and at the same time to note on the margin of the warrant the prisoner's name, and the period of imprisonment in figures. C. O. No. 67 of vol. 2.

Period of imprisonment to be noted in words and figures.

2871. The session judge is invariably to specify the date of the sentence, passed by the nizamut adawlut, in the warrant issued by him for carrying it into execution. C. O. No. 151 of vol. 1.

Date of sentence by nizamut adawlut to be noted.

2872. When a prisoner has not been apprehended until some time after the date of his sentence, the magistrate is to make a special report to the nizamut adawlut, through the session judge, for their orders regarding the date from which the period of imprisonment is to be reckoned. N. A. R. vol. 3, page 49.

If prisoner has absconded.

2873. All warrants are to be returned to the court by which they were issued, after the complete execution of the sentence contained in them, with an endorsement certifying the manner in which the sentence has been carried into execution. In the case of a sentence both for corporal punishment^(a) and imprisonment, the carrying into execution of the former part of the sentence should be endorsed on the warrant at the time of inflicting the punishment; but the magistrate is to retain the warrant until the expiration of the term of imprisonment: or to return it duly endorsed, should the prisoner die during the course of the term: or, in the event of his being removed to another zillah, the warrant is to be transmitted to the magistrate of the zillah to whom the prisoner is sent, with information that he is to return it duly endorsed on the expiration of the sentence or death of the prisoner. C. O. No. 34 of vol. 1.

All warrants to be returned after execution.

How to be endorsed.

(a) Corporal punishment can now be inflicted only by a magistrate; and no other punishment can be superadded. But this rule is applicable to cases in which a fine is included in the same sentence with a term of imprisonment.

Warrants of magistrate to be endorsed by jailor.

2874. Warrants of magistrates, joint-magistrates, and assistants, are to be returned by the jailor when completely executed, with an endorsement to that effect on the reverse. C. O. No. 167 of vol. 2.

If prisoners die during transit.

2875. When prisoners die in course of transit from one district to another, or after arrival, the magistrate to whose district the prisoners are sent, on obtaining information thereof, is invariably to forward the warrant, sent with the individuals so deceasing, to the magistrate from whose district they came, enclosed with a certificate of death under his official seal and signature. C. O. No. 40 of vol. 3.

Form of warrant when labor is commutable to fine.

2876. When a sentence of fine in lieu of labor is passed under the provisions of sect. 3, Reg. II. 1834, the following form is to be adopted: "— and sentenced to be imprisoned without irons for — years from this date, and to pay a fine of rupees — on or before the — day of —, or in default of payment to labor until the fine be paid, or the term of sentence expire." C. O. No. 146 of vol. 2.

Forms.

2877. The forms of warrants have not been prescribed by any circular order; but the following are those generally in use.

No. 1.

Court of Sessions
Trial No. of Calendar
Session

To , Esquire,

Magistrate of .

Warrant of sentence of death.
See para. 2889.

Whereas at a general jail delivery of for the holden at on the day of the month of in the year 185 , has been convicted of and sentenced by the court of nizamat adawlut to suffer death by being hanged by the neck until he be dead, after which his body unless claimed by his relatives or friends is to be either burnt or interred: it is hereby ordered that execution of the said sentence be made and done upon the said on or before the of the month of ; and that you do return this warrant to me with an endorsement attested by your official seal and signature, certifying the manner in which the sentence has been executed, as commanded by the regulations enacted by the governor general in council and now in force. Herein fail not.

Given under my hand and the seal of this court on the day of in the year 185 .

Note. For form of endorsement of death-warrants, see paras. 2890 *et seq.*

No. 5.

Court of Sessions
Trial No. of Calendar
Session

To , Esquire,

Magistrate of

Warrant of sentence of punishment.

* Add words "by the nizamat adaw-

Whereas at a general jail delivery of for the holden at on the day of the month of in the year 185 , has been convicted of and sentenced* to , it is

hereby ordered, that execution of the said sentence be made and done upon the said without delay, as commanded by the regulations, and that you do return this warrant, when completely executed, with an endorsement attested by your official seal and signature, certifying the manner in which the sentence has been carried into execution. Herein fail not.

Given under my hand and the seal of this court, this day of in the year 185 .

No. 6.

Court of Sessions
Trial No. of Calendar
Session

To , Esquire,

Magistrate of

Whereas at a general jail delivery of for the holden at on the day of the month of in the year 185 , has been convicted of and sentenced* to be imprisoned without irons for years from this date and to pay a fine of rupees on or before the or in default of payment to labor until the fine be paid or the term of sentence expire : it is hereby ordered, that execution of the said sentence be made and done upon the said without delay as commanded by the regulations, and that you do return the warrant, when completely executed, with an endorsement attested by your official seal and signature, certifying the manner in which the sentence has been carried into execution. Herein fail not.

Warrant of sentence of punishment when labor is redeemable by a fine.

* Add words "by the nizamat adawlut," when the sentence has been passed by that court.

Given under my hand and the seal of this court, this day of 185 .

No. 7.

Court of Sessions
Trial No. of Calendar
Sessions

To , Esquire,

Magistrate of

Whereas at a general jail delivery of for the holden at on the day of the month of in the year 185 , charged with , has been tried and sentence of acquittal has been passed* upon the said : it is hereby ordered, that the said be released, and that you do return this warrant to me with an endorsement, attested by your official seal and signature, certifying the manner in which the sentence has been executed.

Warrant of acquittal.

* Add words "by the nizamat adawlut," when the sentence has been passed by that court.

Given under my hand and the seal of this court, this day of in the year 185 .

SECTION XI.

OF EXECUTION OF SENTENCE.

Capital punishment.

Copy of sentence to be sent to magistrate.

Discretion allowed to magistrate as to time.

But judge to report extraordinary delay.

Warrant to be returned if execution is delayed beyond the specified time.

Place of execution.

May be at out-station.

Rules to be observed if the execution takes place away from the sudder station.

Disposal of bodies, which are never to be gibbeted.

2878. In all cases of capital punishment, copies of the sentences of the court of nizamut adawlut should be transmitted to the magistrate, together with the warrants for the execution of the prisoners. C. O. No. 32 of vol. 1.

2879. In issuing warrants for capital sentences to the magistrates, a discretion should be left with them, in regard to the period for carrying such sentences into execution, in the warrants, specifying on or before a certain date. C. O. No. 103 of vol. 1.

2880. The session judge is invariably to report, for the orders of the nizamut adawlut, any extraordinary delay which occurs in carrying into execution a sentence of capital punishment. C. O. No. 286 of vol. 1.

2881. Whenever a magistrate has occasion to postpone the execution of a convict sentenced to suffer death beyond the period fixed in the original warrant, he must return such warrant to the session judge with a report of the circumstances of the case; and wait the receipt of a second warrant, or an order endorsed upon the first by the session judge, containing a definite date for carrying the postponed sentence into effect. C. O. No. 305 of vol. 1.

2882. All executions are to take place at the sudder station of the officer to whom the warrant is directed, unless expressly otherwise ordered in the sentence of the nizamut adawlut. The magistrate, or his assistant, covenanted or uncovenanted, is to be present at every execution, whether at the sudder station or in the interior. C. O. No. 42 of vol. 4.

2883. If the crime was committed within the jurisdiction of an outstation, the capital sentence should be carried into execution at such out-station. C. O. No. 975, August 2, 1854. *W. P.*

2884. Whenever a convict is sent to any distance from the jail for execution, the magistrate is to appoint a sufficient guard for his safe custody, and is to be careful to prevent any exactions from the inhabitants of the country at the place of execution: and, with a view to prevent offence against the prejudices of the natives, the court direct that no criminal be executed within any town, village, or other inhabited place; or so near to the house of any individual as to afford just ground of complaint. C. O. No. 65 of vol. 1.

2885. The bodies of criminals are not to be exposed on gibbets after execution, but are to be burnt or interred, unless claimed by the relations or friends. It is discretionary with the magistrate to dispose of the body in either of these modes most consonant with the customs of the tribe and caste of the sufferer. C. O. No. 140 of vol. 2.

2886. Malefactors are to be executed on a drop according to the pattern prescribed by the nizamat adawlut; its construction and use are to be clearly explained, lest any misapprehension should be the cause of unnecessary and protracted suffering. The practice of hamstringing criminals, whether before or after execution, is prohibited; and magistrates are to be careful that all other practices are abstained from, which tend to diminish the solemnity of the proceeding, and the awe, which it is the primary object of the punishment to create in the minds of all who witness it. C. O. No. 53 of vol. 2.

Pattern of drop to be used.

Certain practices prohibited.

2887. So, the practice of allowing music, money, and other indulgences, to persons led to execution is interdicted; but, if the criminal is not possessed of decent clothes, he is to be invariably supplied with a suit and a cap. C. O. Nos. 177 *W. P.* and 182 *L. P.* of vol. 3.

Clothes to be supplied if necessary.

2888. In order to prevent undue haste or carelessness on the part of those charged with the duty, in taking down the body before life is extinct, and the consequent necessity of again suspending it,—it is directed that the body of a person sentenced to death is invariably to be allowed to remain suspended for one hour at least, and that it is not even then to be removed until death is ascertained to have taken place. The Western court also requires that an officer of the medical department should be required to attend in every instance for the purpose of certifying that death has taken place before the body be removed. C. O. No. 18 *W. P.* and No. 19 *L. P.* of vol. 4.

Body to remain suspended until death.

Presence of medical officer.

2889. As it is impossible to render the printed form of warrant applicable to every case of male and female convicts, the session judge is to be careful in each instance to make such alterations as may be necessary, according to the terms of the sentence, to which the warrant should of course conform as exactly as possible. C. O. No. 180 of vol. 1.

Form of warrant to be adapted to each individual case.

2890. Warrants for capital punishment, when duly executed, are to be endorsed in the following form:—"I hereby certify that the sentence of death passed on A. B., son of C. D., has been duly executed, and that the said A. B., son of C. D., was accordingly hung by the neck till he was dead, at the town of Sylhet, on Saturday, the first day of May 1857. I further certify that the body of the said A. B., son of C. D., was afterwards burnt [or buried, or given to his relations or friends, as the case may be]. Given under my hand and the official seal of this court, this 5th day of May 1857. (*Signed*) J. S. Magistrate." C. O. Nos. 260 and 266 of vol. 1.

Form of endorsement of warrant after execution.

2891. In the generality of accidents proceeding from the breaking of ropes made use of to hang criminals, the contingency is the result of a want of management and due care and foresight on the part of the officers charged with the execution of the sentence, to whom it cannot but be regarded as exceedingly discreditable. Its effect is equally injurious and to be deprecated, whether the accession of physical suffering caused thereby, or the disturbance of the solemn impression meant to be conveyed and of the operation of the spectacle as a moral example, be considered. Each certification of the execution of a capital sentence is therefore to include an announcement of no accident, error, or other misadventure having occurred; any occasion of the occurrence of such contingency, with a statement of its cause,

Magistrate to certify that no accident has occurred; or the cause of such.

of the party to whose fault it was owing, and of the steps taken in consequence, is to be duly notified in the return warrant. C. O. No. 99 of vol 3.

Form of endorsement to be used in *W. P.*

2892. The following uniform wording has been prescribed in the Western Provinces for the form of endorsement to be made by magistrates on capital warrants certifying execution of the sentence; and the sessions judges are to satisfy themselves that the certificate has been properly recorded, before returning the executed warrant to the court, and to bring to notice any irregularities. "I hereby certify that the sentence of death, passed on son of by the nizamut adawlut, has been duly executed; and that the said son of was accordingly hanged by the neck till he was dead at on the 185 . I further certify that the body of the said remained hanging one hour, and that the medical officer in attendance certified complete extinction of life prior to its removal; and that it was afterwards burned (or buried, or delivered to relatives, as the case may be) not having been claimed by his relations, and that no accident, error, or other misadventure occurred during the execution." C. O. No. 601, May 18, 1854. *W. P.*

Rule where a female criminal is executed.

2893. In the instance of female criminals capitally sentenced, provision is always made in the order of the nizamut adawlut, for the possible contingency of their pregnancy. The certificate of execution of a pregnant female is to be recorded as follows:—"I hereby certify (*as above*); and that the said Mussumat ———, not having been found pregnant [or having been found pregnant, and reprieved till forty days after delivery,—*as the case may be*] was accordingly hanged, &c. (*as above*)." In the event of pregnancy being declared, that fact, as certified by the medical officer, is always to be noted on the warrant of the sessions court, which is to be returned by the magistrate for the sessions judge to endorse thereon the suspension of execution of the sentence for the period indicated. C. O. No. 1405, November 16, 1854, *W. P.*

Warrants to be forwarded to the nizamut adawlut after execution.

* See para. 1137.

2894. By sect. 78, Reg. IX. 1793* warrants for capital punishment are to be transmitted, after being carried into execution, to the nizamut adawlut. Session judges are to pay strict attention to this rule, and to forward the death warrants immediately on the receipt of them from the magistrates. C. O. No. 134 of vol. 2.

Corporal punishment.

Prisoners always to be examined by the surgeon previous to punishment by stripes.

See para. 2726.

2895. All prisoners are to be examined by the surgeon of the station (or in his absence by the native doctor) previous to their being flogged; and the punishment is to be postponed of any prisoner, whom the surgeon considers in too infirm a state to receive it, as long as he may judge necessary. The native doctors attached to the jails of the several stations are to be present on all occasions, when prisoners are flogged; and the punishment is to be stopped at any stage of it, if the native doctor is of opinion that the infliction of the remaining stripes will endanger the prisoner's life; in which case, the remainder of the punishment is to be postponed until the surgeon of the station considers the prisoner capable of sustaining it. C. O. Nos. 10 and 12 of vol. 1.

and by the magistrate.

2896. All prisoners sentenced to be flogged should be brought before the magistrate immediately previous to the infliction of the corporal punishment, that he may,

by personal observation, and a reference, if necessary, to the surgeon of the station, satisfy himself that the prisoner does not labour under any bodily infirmity, and that his general state of health at the time is such as to render him capable of sustaining the punishment without the probability of endangering his life. C. O. Nos. 118 and 316 of vol. 1.

2897. No female is to be sentenced to corporal punishment by stripes. The ratan is the only instrument to be used in the infliction of corporal punishment by stripes; and the sentences and warrants are to direct the same accordingly. Reg. XII. 1825, sects. 3 and 4.

Not to be inflicted on females.
Ratan only to be used.

2898. When a prisoner is flogged, he is to be tied to a whipping post constructed in such manner as to secure him from receiving any part of the blow on the fore part of his body; and the striker is to be positively enjoined to strike the prisoner on the back only. C. O. No. 10 of vol. 1.

Whipping how to be inflicted,
See para. 2726.

2899. In order to prevent the detention of prisoners in the jail beyond the period of their sentences, all prisoners sentenced by the sessions courts, and also those sentenced by the nizamat adawlut, to imprisonment for a limited period, are, when their sentence is explained to them, to be furnished with a certificate signed by the magistrate, and sealed with his official seal, shewing the name, age, and personal description of the prisoner, the crime of which he is convicted, the period of imprisonment to which he is sentenced, the date of the warrant, and the date on which the period of the sentence will expire. C. O. Nos. 292, 294, and 295 of vol. 1.

Certificate
of sentence to be given to prisoner :

2900. The magistrates are to cause prisoners to deliver up, on their discharge, the certificates granted to them at the time of their sentences; as well as to be careful that such certificates are taken back and destroyed in cases of death before the expiration of the sentence. C. O. No. 294 of vol. 1.

which is to be returned in case of death or expiry of sentence.

2901. When the sentence passed on a prisoner is mitigated, the magistrate is to recall the original certificate; and, on explaining to him the mitigated sentence passed upon him, is to furnish him with a new certificate specifying the period when the reduced term of imprisonment awarded therein will expire. C. O. No. 21 of vol. 3.

Certificate to be amended in case of mitigation of sentence.

2902. In the Western Provinces each prisoner is to be provided, in lieu of the certificate, with a wooden ticket measuring four by two inches; one side of which is to be branded with the prisoner's number, and the two last figures of the year in which he was admitted; and on the reverse the date of the expiration of the sentence. C. O. Insp. Prisons *W. P.* No. 3, August 28, 1845.

Wooden ticket used in *W. P.* in lieu of certificate.

2903. With the view to prevent the possibility of the detention of any prisoner beyond the term of imprisonment adjudged against him, the session judge and magistrate are to keep, in the English language, registry books of all unexpired sentences, in the form

Register of unexpired sentences.
Rules for keeping

annexed(a). The entries are to be made by the magistrate immediately on receiving the warrant. Persons are to be entered under the year in which their sentences expire, so that a glance over it at the end of each year will show whether any have been by neglect confined beyond their period of sentence. A memorandum of this is to be made and signed by the session judge or magistrate at the close of each year. Prisoners sentenced to death, or to imprisonment for life, are to be entered in the year in which they are sentenced. The register of each court is to be confined to the warrants issued from that court. The register of sentences passed by the magistrate, and joint magistrate, is to be kept by the foudaree nazir, and submitted for the inspection of the magistrate at the commencement of each month. C. O. Nos. 23, 71, 167, 178, and 225 of vol. 2.

Rule in case of mitigated sentence.

2904. Whenever the sentence passed on a prisoner is mitigated, the magistrate, as well as session judge where the original sentence has been passed by the latter officer, is immediately to cause the name of the prisoner to be struck out, in red ink, from the register of the year, in which such original sentence would have terminated, and to be entered in the register of the year in which the mitigated sentence is to expire, inserting in col. 7 of the former register a memorandum of such mitigated sentence. When the mitigation or remission of punishment has been ordered by the nizamat adawlut, the endorsement on the prisoner's warrant of such mitigation or remission is to be made in the vernacular language of the district, as well as in English. C. O. No. 21 of vol. 3.

Judges to examine registers.

2905. Judges are at intervals to call for and examine these registers, in order to satisfy themselves that they are carefully and punctually kept up. C. O. Govt. Bengal, No. 1044, April 30, 1855.

(a)

Register of unexpired sentences.

1.	2.	3.	4.	5.	6.	7.					
Names of prisoners.	Date of sentence.	Term of imprisonment.	When the sentence will expire.	Warrants when received back from jailor or magistrate.			Warrants when returned to the nizamat adawlut.				
		Years.	Months.	Month.	Date and year.	Month.	Date.	Year.	Month.	Date.	Year.
(Iharum, Jubba, Jance, Pema, Rambuksh)	10th April 1826, 7th Aug. 1833, 5th Sept. 1833, 27th Feb. 1833, 3rd Feb. 1833,	7 Death. Release. " "	April " " Aug. May	10th 1833, " " 27th 1833, 3rd 1833,	April Sept. Sept. Aug. May	12th 10th 12th 28th 4th	1833 1833 1833 1833 1833	.. Sept. " " "	.. 12th " " "	.. 1833 " " "	<i>Memo.</i> Colum 6 to be omitted in magistrate's register.

Note.—The register of each court should be confined to the warrants issued from that court. Warrants of magistrates, joint magistrates, and assistants, to be returned by the jailor when completely executed with an endorsement to that effect on the reverse.

2906. In the Western Provinces, two registers are to be kept, one of admission, and the other of release, in the forms annexed (*a* and *b*). In the former a number is assigned to each prisoner; and a fresh register is prepared at the commencement of each year, the names of the prisoners remaining in confinement being first entered with their original numbers, and new numbers being assigned in consecutive order to new admissions. A warrant of imprisonment should include only those prisoners, whose sentences will expire on the same day; and such warrants are to be carefully docketed and kept in bundles according to the year and month in which the sentence will expire. Only one register of release should be kept for all prisoners whether sentenced by the magisterial officers, the session judge, or the nizamat adawlut. A prisoner sentenced to death or imprisonment for life should be entered under the date of his sentence: and banished prisoners will be entered under the date of the expiry of the sentence in both zillahs. A memorandum is to be made in the column of remarks of the register of release, if a sentence be mitigated, or an additional term of imprisonment awarded; but in the latter case the fresh sentence is not to be entered in the register of admissions, until the expiry of the first sentence and re-admission on such second sentence. A memorandum of the death, or escape, or transfer of any prisoner is to be made at the time of the occurrence in both registers, and on the original warrant; and copy of the proceeding held is to be sent to the judge for entry in his register. The original warrant

Two registers to be kept in *W. P.*; one of admission, and the other of release.

Warrant to include those whose sentences expire on the same day.

All warrants to be docketed and put in bundles.

One register of release to be kept for all, and entries to be made under date of expiry.

In case of mitigation or additional sentence.

In case of death, escape, or transfer.

(*a*)

Book of prisoners daily admitted into jail under sentence.

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.
Date of admission of prisoner into jail.	No. of warrant.	Current number of prisoner.	Name and age of prisoner, and father's name.	Crime, caste, and profession.	Term, and date of sentence.	With or without labor.	With or without irons.	Amount of fine and term of payment.	Sentence by whom passed; and prisoner from what zillah received.	Date of expiration of sentence.	Remarks.

(*b*)

Register of release.

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.
No. of warrant.	Current number of prisoner.	Name of prisoner.	Crime.	SENTENCE.			Sentence by whom passed, and prisoner from what zillah received.	Date of release, and signature of officer.	Date of return of warrant.	Remarks.
				Date.	Term.	Expiration.				

In cases of recapture.

and purwanas of absconding prisoners are to be retained by the magistrate and jailor. On the re-capture of an absconded prisoner under sentence of labor, he is immediately to be employed in fulfilment of his primary sentence; and is not to be placed in the howalat pending enquiry into, or a final order on, this or any other offence. The expiry of a recaptured prisoner's first sentence will be postponed for as many days as he has remained at large, and a fresh entry of such expiry must be made in the register of release. C. O. Insp. Prisons *W. P.* No. 3, August 28, 1845.

Sentence passed in another jurisdiction.

By joint magistrate not residing at sudder station.

2907. All prisoners committed by a joint magistrate not residing at the sudder station to take their trial before a sessions court, if sentenced to a period short of perpetual imprisonment, and if banishment form no part of their sentence, are to be sent to be imprisoned till the expiration of their term at the station of the joint magistrate by whom they were committed, provided the jail at such station has room and accommodation for the prisoners without danger to their safe custody or health. Where this is not the case the prisoners must, either all or part of them, according to the necessity, be confined in the jail of the magistrate's station. C. O. No. 288 of vol. 1.

Execution of sentences of mofussil courts in jails within the limits of the supreme court.

2908. Whereas it is expedient, that offenders sentenced by the mofussil authorities to imprisonment, with or without hard labor, should be subjected to the most improved rules of prison discipline, which cannot in all cases be conveniently done except in the prisons locally situate within the jurisdiction of Her Majesty's supreme courts, it is enacted that all civil and criminal jails and houses of correction within the jurisdiction of Her Majesty's supreme courts, shall, according to the nature of the case, be liable to be used by the sheriff for the purposes of this Act [*i. e.*, the execution of mofussil processes within the jurisdiction of the supreme court], and the parties imprisoned therein under the authority of this Act shall be liable to the prison-discipline thereof;—and all sentences of imprisonment passed by any judge, court, or magistrate in the Company's territories beyond the local limits of the supreme court, may be executed in whole or in part within any of the jails or houses of correction aforesaid, provided that a copy of the warrant of commitment or other process authorizing the imprisonment be so indorsed as aforesaid, [*i. e.*, by one of the judges of the supreme court] and such indorsement contain the necessary directions. Act XXIII. 1840, sect. 8.

Execution of sentences passed by Company's officers administering foreign states.

2909. Within the territories subject to the government of the East India Company, and without the local limits of the jurisdiction of Her Majesty's courts of judicature, the several officers in charge of jails are competent to give effect to any sentence that is passed by any court established, or that may be established by the authority of the governor general in council, for the administration of criminal justice in states or territories administered by officers acting under the authority of the Company, although such states or territories are not subject to the government of the presidency of Fort William in Bengal, Fort St. George, or Bombay, or are not subject to the operation of the general regulations. Act V. 1847, sect. 1.

Warrant of such officer is sufficient authority for hold-

2910. A warrant under the official seal and signature of the officer or officers, exercising criminal jurisdiction within such states or territories as aforesaid, is sufficient

authority for holding any prisoner in confinement, or for transmitting any prisoner for transportation beyond sea, or for inflicting any other punishment prescribed therein. Act V. 1847, sect. 2.

ing prisoner in confinement;

2911. If any officer in charge of a jail entertains any doubt as to the legality of any warrant sent to him for execution under this Act, or as to the competency of the person or persons, whose official seal and signature is affixed thereto, to pass the sentence and issue such warrant, such officer is to refer the matter to the government to which he is subject, by whose order on the case such officer, and all other public officers, are to be guided as to the future disposal of the prisoner. Pending any such reference the prisoner is to be detained in custody in such manner and with such restrictions or mitigations as are specified in the warrant. Act V. 1847, sect. 3.

if the officer in charge of the jail entertains doubts of the legality of the warrant, or of the competency of the officer issuing it;

2912. The provisions of the existing Acts and Regulations, and all other rules in force for the treatment and security of prisoners confined in the said jails, are to apply and to be of equal force and effect in the case of prisoners confined therein under this Act, as in the case of other prisoners confined therein. Act V. 1847, sect. 4.

treatment and security of prisoners confined under such warrant.

2913. A magistrate is competent to give effect to the sentence of a general court martial, adjudging imprisonment with labor among the convicts of the civil power, on the offender being delivered into his custody, and the sentence being certified to him for the purpose of giving it effect by the judge advocate general, or his deputy under the authority of the commander-in-chief; and the sentence so certified is the magistrate's warrant and authority for carrying it into effect according to the terms of it. Reg. IV. 1820, sect. 2.

Magistrates required to give effect to sentences of military tribunals.

2914. Whenever, under Act XXIII. 1839,(a) any sentence of a court martial adjudges imprisonment, or imprisonment with labor, for any offence, it is the duty of every judge, magistrate, sheriff, or other officer in charge of any jail, to give effect to such sentence on the offender being delivered into his custody, and on being furnished with a copy of the sentence by the officer commanding the division, garrison, regiment, or detachment, to which the offender belongs. Act II. 1840.

2915. Whenever a court martial adjudges imprisonment with labor, or with solitary confinement, or both, or whenever the sentence of such court is commuted to any such imprisonment, it is the duty of every judge, magistrate, sheriff, or other officer in charge of a jail, to give effect to such sentence, on the offender being delivered into his custody, and on being furnished with a copy of the sentence by the officer commanding the division, fieldforce, district, or brigade, within which the trial is held. Act XX. 1845, article 81.

2916. Officers in charge of jails are not to receive into custody any man, who may be sentenced to imprisonment by court martial, unless accompanied by the proper warrant of commitment, as prescribed by general orders, March 3, 1853, and a descriptive roll of the

But not to act without warrant of commitment in prescribed form.

(a) This Act empowers courts martial in certain cases to sentence soldiers of the native army of the Company to imprisonment with or without hard labor for two years if a general court martial, or one year if a garrison or line court martial, or six months if a regimental or detachmental court martial.

prisoner(a). C. O. Govt. Bengal, No. 16, December 6, 1854. C. O. Insp. Prisons W. P. Nos. 50 of 1854 and 65 of 1855.

Commander-in-chief may pardon military convicts, or remit part of sentence, in certain cases.

2917. The commander-in-chief of the military forces in the service of the East India Company in each presidency has power to pardon any person belonging to the said forces, convicted by sentence of a court martial of any offence against the articles of war framed for the government of the native officers and soldiers in the military service of the East India Company, which, wherever committed, is not punishable otherwise than by sentence of a court martial; or, instead of granting a full pardon to any such person, may remit any part of the punishment awarded for such offence. Act VI. 1850, sect. 1.

Warrant to be issued ;

2918. In such cases, the commander-in-chief is to issue a warrant under his hand setting forth the offence, and a copy of the warrant or other instrument by which the offender is kept in custody in execution of the sentence, and pardoning or remitting such part of the punishment awarded for the offence as to him shall seem fit. Act VI. 1850, sect. 2.

and countersigned by magistrate or judge, if offence be punishable only by court martial.

2919. The said warrant shall be countersigned by the magistrate of the zillah, in which the offender is undergoing his sentence; or, if he is confined in any prison belonging to one of the supreme courts of judicature established by royal charter, shall be countersigned by a judge of such court; if it shall appear to such magistrate or judge that the offence, wherever committed, is not punishable by any authority other than that of a court martial; but not otherwise. Act VI. 1850, sect. 3.

Officer in charge of jail to give effect to warrant.

2920. All sheriffs, jailors, and other persons having custody of any offender under sentence of a court martial, are to obey and give effect to any warrant of the commander-in-chief, countersigned by a magistrate, or judge of the supreme court as aforesaid, for the pardon and release of any offender in their custody respectively, or for the remission of any part of his sentence. Act VI. 1850, sect. 4.

(a) With reference to the 2nd paragraph of the 84th article of war for the native troops, the commander-in-chief is pleased to direct, that, when a soldier of the native army shall be delivered over to the civil power to undergo imprisonment with hard labor, there shall be sent with him, in addition to a descriptive roll containing a statement of any indelible mark upon his person and any other matter tending to his proper identification, a warrant of commitment made out in the following form :—

To the magistrate or other officer in charge of the jail at _____
Whereas at a _____ court martial held at _____ on the _____ day of _____ 185 _____, sepoy* of the _____ regiment of native† Infantry, was convicted of _____‡; and whereas the said _____ court martial on the _____ day of _____ 185 _____, passed the following sentence upon the said _____, that is to say _____ (sentence to be entered in full but without signature):—

And whereas the said sentence has been duly confirmed§ by _____ commanding _____, and the said _____ is herewith transmitted to you to undergo the same :—

Now these are to require and authorize you to receive the said _____ into your custody, and to inflict upon him the said sentence of imprisonment with hard labor for _____, reckoned from _____ the day on which the said sentence was passed.

Given under my hand at _____ this _____ day of _____ 185 _____.

To be signed by the confirming officer of a regimental, detachmental, or line court martial, or by the assistant adjutant general of the division, or the brigade major of the station, or the commanding officer of the regiment, if the trial has been by general or district court martial.

* Or trooper, or private, or as the case may be.

† Or light cavalry, or artillery, or as the case may be.

‡ The offence to be briefly stated here as desertion, theft, receiving stolen goods, fraud, disobedience of lawful command, or as the case may be.

§ If there is any mitigation of the sentence, such mitigation must be noticed thus, "to the extent of _____"

SECTION XII.

OF REMOVAL OF PRISONERS UNDER SENTENCE.

2921. When any person is under sentence of imprisonment, within the territories under the government of the East India Company, by any authority other than that of one of the supreme courts of judicature established by royal charter, the governor or governor in council, or other person administering the government of the presidency or place, may order the removal of such prisoner from the prison or place, in which he is confined, to any other public prison or place of confinement within the same presidency or government. Act VII. 1850, sect. 2.

Government may order removal of prisoners to another place of confinement.

2922. The time of removal from one prison to another, or while the prisoner is in custody under such warrant of removal, is to reckon as part of his imprisonment. Act VII. 1850, sect. 3.

Time of removal included in the term of imprisonment.

2923. When a magistrate has occasion to forward a prisoner to another district, he is invariably to transmit either by dāk, or with the chalan, a roobakaree or letter containing a distinct statement of the order, in furtherance of which the despatch is made. C. O. No. 2211, May 9, 1854 *W. P.*

Notice to be sent of order under which prisoner is removed.

2924. The magistrates are to report when convicts are sentenced to transportation beyond sea, or to banishment, specifying the names, ages, crimes, and sentences of the several convicts; and, in the case of those sentenced to banishment, the district in which they have usually resided before they were brought to trial. Reg. LIII. 1803, sect. 8, cl. 4.

Report of convicts sentenced to transportation, or banishment;

2925. All statements of prisoners sentenced to imprisonment in banishment, or in transportation, or for life in the Alipore jail, are to be forwarded by magistrates for the orders of government. C. O. Govt. *Bengal*, No. 1072, October 10, 1844.

to be made to government by magistrate.

2926. Magistrates are to distinguish in these reports prisoners under sentence of the nizamat adawlut, from those who have been sentenced by the sessions court; specifying also the date of sentence in each case. C. O. No. 150 of vol. 1.

Prisoners to be classified therein.

2927. Abstracts in a tabular form of sentences of imprisonment in banishment, or in transportation, or for life in the Alipore jail, passed by the nizamat adawlut or session judges, are to be forwarded to government by the court and the session judges respectively. Such abstracts are to be forwarded by the sudder court as soon after the date of sentence as is practicable; but abstracts of sentences of banishment, passed by the session judges, are not to be transmitted by them, until after the expiration of 3 months from the date of sentence, in order to allow of that period for appeal. C. O. Govt. *Bengal*, No. 1072, October 10, 1844. If the case be still under appeal on the expiration of three months, the judge is to submit an abstract statement when the result of the appeal is known, noting thereon the date of the sudder court's final orders on the appeal and the date on which they were received in his office. But he is on the expiration of three months to submit his abstract, as above required, nevertheless; distinguishing the prisoners who have not appealed within

Abstracts of sentences to be forwarded by nizamat adawlut and session judge.

If the case remain under appeal beyond three months.

that period; and noting in the case of prisoners who have appealed, whether or not final orders have been received. C. O. Govt. Bengal, No. 18, March 19, 1855.

Form of application for orders for removal.

2928. No prisoner under sentence of transportation, or perpetual or temporary imprisonment in banishment, though the place in which he is to undergo his imprisonment is mentioned in the sentence, is to be removed from the jail until the receipt of the orders of government on the application for his removal. The magistrates are to submit separate statements of convicts sentenced by the sessions courts, and by the nizamut adawlut, according to the annexed forms A, (a) B, (b) and C(c). Statement A is to be prepared and sub-

(a) A. Statement of convicts sentenced by the session judge, without reference to the nizamut adawlut, to imprisonment in banishment at a jail delivery of , for the month of , 185 .

1.	2.	3.	4.	5.	6.	7.	8.
No.	Names of convicts and of their fathers; and of the village and district of which they are natives.	Caste.	Age.	Crime.	No. of each convict in the jail delivery statement No. 1.	Date of sentence of session judge.	Sentence.

(b) B. Statement of convicts sentenced by the session judge, without reference to the nizamut adawlut, to imprisonment in banishment at a jail delivery of , for the month of , 185 .

1.	2.	3.	4.	5.	6.	7.	8.	9.
No.	Names of convicts and of their fathers; and of the village and district of which they are natives.	Caste.	Age.	Crime.	No. of each convict in the jail, delivery statement No. 1.	Date of sentence of session judge.	Date of receipt by the magistrate of the warrant of the session judge.	Sentence.

(c) C. Statement of convicts sentenced by the nizamut adawlut to temporary imprisonment in banishment, or perpetual imprisonment in the jail at Alipore, or transportation beyond sea.

1.	2.	3.	4.	5.	6.	7.	8.
No.	Names of convicts and of their fathers; and of the village and district of which they are natives.	Caste.	Age.	Crime.	Date of sentence of nizamut adawlut.	Date of receipt of warrant of session judge for carrying the sentence into execution.	Sentence.

mitted after the expiration of 30, but within the period of 45 days, from the end of the month in which the sentences were passed. The magistrate is to be careful not to include in the same statement convicts sentenced at the jail deliveries of different months. In the event of the issue of a warrant including a sentence of banishment being suspended in any case [pending reference to the nizamat adawlut] under the rule contained in cl. 6, sect. 4, Reg. IX. 1831*, the magistrate is to submit a statement in form B within 15 days after the receipt of the warrant. Statement C is to be prepared and submitted within 15 days from the receipt by the magistrate of the warrant of the session judge for carrying into effect the sentence of the nizamat adawlut. Whenever a magistrate has occasion, in consequence of the crowded state of the jail, to apply for permission to remove convicts not sentenced to banishment to another district, he is to submit statements in form as similar to these as possible, keeping the prisoners sentenced by the sessions court separate from those sentenced by the nizamat adawlut. In these statements the name of each prisoner's father is invariably to be inserted. C. O. Nos. 183 and 204 of vol. 2. C. O. Govt. Bengal, No. 34, May 14 1856.

* c. para. 1473.

So, if removal of prisoners is necessary from the crowded state of the jail.

2929. In the *Western Provinces*, applications relative to the disposal of prisoners sentenced to banishment, are to be submitted through the inspector. C. O. Insp. Prisons *W. P.* No. 44, March 7, 1854; and No. 63 of 1855.

Application to be sent through inspector, *W. P.*

2930. The jail darogah is to be furnished with a memorandum, for the guidance of himself and successors, to the effect that he will be expected to draw the attention of the magistrate to the cases of any prisoners sentenced to imprisonment in banishment, for whose transfer no orders are received within 4 months from the date of sentence. This however is not intended to relieve the magistrate from a proper share of responsibility. C. O. Govt. Bengal, No. 2014, September 24, 1845.

Darogah to remind the magistrate, if no orders are received for 4 months.

2931. The nizamat adawlut is also competent, under the discretion allowed by the Mahomedan law, to order the removal of all convicts, under sentence of imprisonment, to any jail or district within the Company's possessions, in which it is thought proper to keep or employ them during the period of their respective sentences, although no specific sentence of banishment has been passed against them. But no such removal is to take place without the special order of the nizamat adawlut [or of government.] Reg. LIII. 1803, sect. 8, cl. 5.

The sudder court may order removal of convict to any jail.

2932. Under this rule a prisoner, who had twice effected his escape from a mofussil jail, was removed to Alipore for the rest of the term of his imprisonment by order of the court. Reports *L. P.* 1855, part 2, page 853.

Example.

2933. As the necessity of making a reference to government for the removal of sick prisoners from the jail of one district to that of another, occasions considerable delay, which in cases of emergency frequently proves injurious to the health of the prisoners, if not fatal to them, officers in charge of jails are authorized to transfer sick prisoners in extreme cases from one jail to another on their own responsibility reporting the circumstance to the secretary to government as soon after as possible. C. O. Govt. Bengal, No. 1030, June 9, 1847.

Officers may transfer sick prisoners on their own responsibility, reporting to government.

Government may retain prisoners under sentence of transportation.

2934. It is competent to government to detain in the jail at Alipore, for any period deemed expedient, any convicts sentenced to transportation. Reg. IX. 1813, sect. 2, cl. 2.

In what cases they are not to be sent to Alipore, in regard to period of sentence;

2935. Prisoners are not to be sent to Alipore from the *Western provinces*, who have been sentenced to imprisonment for a shorter period than 14 years; nor from the *Lower provinces*, who have been sentenced to imprisonment for a shorter period than 7 years. C. O. No. 106 of vol. 1.

in regard to incapacity for labor.

2936. No persons are to be forwarded to Alipore jail, who are incapable of bodily labor from age, sickness, or other infirmity; or who have been exempted from bodily labor by their sentences; or in consideration of their former rank and situation in life; under C. O. Nos. 3, 8, and 44 of vol. 1*. C. O. No. 88 of vol. 1.

* *v. para.* 278; *et seq.*

At what seasons to be sent.

2937. Convicts sentenced to imprisonment in Alipore jail should be forwarded so as to arrive at Calcutta during the cold season, or in the early part of the south east monsoon, in order that their constitutions may be habituated to the climate previously to the commencement of the periodical rains. C. O. Nos. 97 and 106 of vol. 1.

Lists of convicts to be sent with them;

2938. When convicts under sentence of transportation are sent to the Alipore jail, an accurate list is to be transmitted with them in the following form:

Names of prisoners and of their fathers.	Description of prisoners.	Crime.	Date of sentence.	Period of transportation.
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It is important that the description of the persons of the convicts inserted in the second column should be accurate. The lists are to be written in both the Hindostanee (or Bengalee in the Bengal districts) and Persian languages, as well as in English, and the magistrates are to issue positive orders, that the guards on relieving each other should carefully compare the same with the convicts. The same rules are applicable to prisoners under sentence of banishment to other districts, either for life, or for a term of years. C. O. Nos. 7 and 25 of vol. 1; and No. 20 of vol. 3.

noting dangerous characters.

2939. If any of such convicts is of a notorious and dangerous character, it is to be noted in the above statement. C. O. No. 95 of vol. 1.

Purwana to be given to native officer in charge.

2940. In addition to the lists in English and the vernacular with which the escorts are furnished under the above orders, the principal native officer should always receive a purwana authorizing him to take charge of the prisoners, and specifying the route he is to follow and the jails at which he is to halt. In cases of escape or detention by sickness, the fact should be notified on the back of the list by the magistrate of the district in which such escape or detention occurs, instruction being at once forwarded by that officer both to the magistrate of the district when the prisoner was convicted, and to the superintendent of the Alipore jail. C. O. Govt. *Bengal*, No. 4, September 15, 1853.

In case of escape or detention by sickness on the road.

Mode of transmission *L. P.*

2911. On the receipt of warrants from the session judges for the transportation of prisoners sentenced by the nizamat adawlut, the magistrates are to forward such prisoners

by the first convenient opportunity to the superintendent of the Alipore jail, transmitting to that officer at the same time by dāk a statement in the form C [see note to para. 2929], and headed "a statement of convicts sentenced to transportation beyond sea for life, despatched on the—of—185— to the Alipore jail from the jail of—." Simultaneously with the above statements the magistrates are to forward copies of the same to the secretary to government for comparison with the abstracts furnished by the sudder court. C. O. Govt. Bengal, No. 1964, August 27, 1845.

Particulars to be notified to superintendent of Alipore Jail.

2942. The magistrate is to transmit to the superintendent of the Alipore jail, by dâk, simultaneously with the despatch of the convicts, a notification of the date on which they quit the station, and the probable date of their arrival at Alipore, together with copies of the warrants and the prescribed lists. The original warrants and lists are to accompany the convicts themselves. C. O. Govt. *Bengal*, No. 4, Sept. 15, 1853; No 17, Dec. 16, 1854; and No. 25, June 30, 1855. C. O. Insp. Prisons *W. P.* No. 61 of 1855.

2943. Care is to be taken that no convict forwarded to the Alipore jail takes with him more than one cotora, or brass drinking cup, without neck or handle, which should weigh not more than six chittacks; and an extra suit of clothes. No such convict is to be allowed to carry a lotah with him. C. O. Govt. *Bengal*, No. 4, Sept. 15, 1853; and No. 17, Dec. 16, 1854. C. O. Insp. Prisons *H. P.* No. 61 of 1855.

**Prisoners what to
take with them.**

2944. The magistrate is required also to forward a memorandum in English, in reference to the pay of the guard, drawn up in the annexed form; a copy of this memorandum in the vernacular being supplied to the officer in charge.

Memorandum
regarding pay of
guards.

*Memorandum showing the amount of advance received by the guard on their departure from
on the in charge of prisoners; and the amount
of advance payable to them on their departure from Alipore.*

Names of the guard in charge of prisoners.	Rate of pay per diem.	Amount received in advance.	Further advance to be paid by the superintendent of the Alipore jail.

Travelling allow-
ances of burkun-
dazes.

2945. Jail burkundazes, when sent in charge of prisoners to districts other than that in which they are employed, are to receive travelling allowance at the rate of 3-tenths of their salary. C. O. Govt. *Bengal*, No. 1307. July 4, 1853.

Burkundazes to
receive certificate
for back-passage in
steamers.

2946. Burkundazes sent to Alipore in charge of convicts are to be furnished with a certificate, on presentation of which they will receive back passage on the government steamers free of expense. C. O. Govt. *Bengal*, No. 1818, August 26, 1846.

Receiving jails
L. P.

2947. *Rule 1.* The undermentioned jails are to serve as receiving jails for all prisoners sentenced, in the districts specified, to transportation or to imprisonment in the Alipore jail:

Patna—for the districts of	<div> <div>Patna, Sarun, Chumparun, Tirhoot, Shahabad, Behar.</div> </div>	Rajshahye—for the districts of	<div> <div>Rajshahye, Malda, Dinagapore, Rungpore, Bogra, Pubna.</div> </div>
Bhaugulpore—for	<div> <div>Bhaugulpore, Purneah.</div> </div>	Dacca—for	<div> <div>Dacca, Mymensing, Sylhet, Tipperah.</div> </div>
Bakergunj—for	<div> <div>Bakergunj, Noakhalee, Chittagong.</div> </div>	} so long as a government steamer continues to run between Dacca and Calcutta.	

Rule 2. The magistrates of the several districts are to forward their convicts to the receiving jails, at such times, and in such numbers, as is most convenient, accompanied with their warrants and descriptive rolls. *Rule 3.* From the receiving jails, as also from the river stations of Monghyr and Moorshedabad, the convicts are to be despatched under suitable escort to Calcutta on the government steamers, as opportunity may offer, the magistrates in charge of those jails communicating direct for the purpose with the steam agents. The above arrangement applies to Moorshedabad only for such time as the Bhaugiruttee is navigable for steam vessels; during the remainder of the year convicts are to be forwarded from that district to Alipore in the same manner as heretofore. *Rule 4.* The magistrates in charge of the receiving jails, as also the magistrates of Monghyr and Moorshedabad, are, previous to each despatch, to transmit by dāk to the superintendent of Alipore jail a statement of the prisoners about to be despatched, in order that due provision may be made for their reception. The statement is to be in the form C [see note to para. 2929] with an additional column, showing the district from which each prisoner was originally sent. *Rule 5.* Such magistrates are to be careful to forward to the secretary to government, simultaneously with the despatch of these statements, copies of the same for comparison with the abstracts furnished by the sudder court. They are also to be particularly careful to have prisoners and their guards in readiness, together with provisions for the usual duration of the trip, which may be ascertained from the steam agents, so that no delay may occur in the embarkation. Resolution Govt. *Bengal*, June 3, 1846.

Statements to be
sent to superinten-
dent of Alipore jail
and Government.

Rules for des-
patch of convicts by
government stea-
mers L. P.

2948. The following rules are to be observed, whenever convicts are forwarded on government steamers. *Rule 1.* On receipt of information of the arrival of a government steamer at any river station, where convicts under sentence of imprisonment in transpor-

tation beyond sea, or of imprisonment in the Alipore jail, are awaiting orders for their transit to that jail, the magistrate at that station will write to the steam agent, who may be resident at such station, and to the commander of the vessel, to make the necessary arrangements for their embarkation; and he will state at the same time the number to be embarked. But the entire number of convicts on board of one vessel at one time should ordinarily not exceed forty, and never when no military guard is on board. When a larger number of convicts may be awaiting transport at a station, an application should, if the exigency of the case will admit of it, be previously made by the magistrate to government for special orders on the occasion. *Rule 2.* The magistrate embarking convicts as above, should be particularly careful to have the convicts and their guards in readiness, together with a proper supply of provisions, according to the usual or probable duration of the trip, in order that no delay may occur in the embarkation. *Rule 3.* The magistrate, or one of his covenanted subordinates, should superintend the embarkation and furnish the commander with a descriptive roll of the convicts, similar to that forwarded to the superintendent of the Alipore jail. *Rule 4.* The magistrate will also furnish the principal officers of the guards, as well as the superintendent of the Alipore jail and the government, with the several documents relating to the convicts, &c., that are now furnished under the existing orders of the sudder court and government. *Rule 5.* On the convicts being placed on board, their old gunny beddings should always be exchanged for new ones; and the clothing, &c., allowed to them, under existing orders, should be carefully searched, with a view to prevent the possibility of their concealing in them knives or other instruments as means for effecting escape or suicide. *Rule 6.* The irons of the convicts are to be strong, and their rivets perfect with welded heads on both sides. They are to be carefully examined by the commander, who should certify in his receipt for the convicts, that he has personally satisfied himself that the irons and rivets are strong and firm. The *bél* chains to which the convicts are to be attached should be of strong round links. *Rule 7.* The convicts are to be fastened to long *bél* chains kept on board each steamer. No more than ten convicts should be fastened to each chain. State prisoners, when forwarded, should be kept separate from ordinary felons. *Rule 8.* Instead of the chain passing through the rings of the fetters of each convict, by which arrangement all the convicts must be let loose to get at the last man, each convict should have a separate chain of two feet in length, welded to his fetters, to be locked on to a link of the *bél* chain with a separate padlock. Each convict can thus be removed from the running chain separately without interfering with others; they will also be less cramped and confined while sleeping. By adopting this plan, convicts of a superior caste, or any notorious offender, can be stapled down separately. *Rule 9.* The convicts are to be so classed in the running chains as to admit, if possible, of the respectable caste, in one chain, eating their meals apart from the lower castes, without leaving the running chain. *Rule 10.* One mehter should accompany the gang of convicts sent by each steamer. *Rule 11.* One or two metal pans should be supplied to the mehter in charge, for the use of the convicts during the night. *Rule 12.* Should any convict be released from the running chain, in consequence of

On the arrival of the steamer, magistrate to communicate with steam-agent and commander

What number of convicts may be embarked on one vessel.

Convicts and guards to be in readiness, with supply of provisions.

Magistrate or assistant to superintend embarkation; and to furnish a description roll.

Documents to be furnished.

New bedding to be furnished.

Search for knives, &c.

Irons to be firmly rivetted.

Commander, to certify personal examination of irons.

Bél chains.

Each convict to be fastened to the *bél* chain by a separate chain and padlock.

Convicts to be chained so as to admit of their eating separately.

Mehter.

Cautions against pretended sickness

and attempts to escape.

evident sickness, he can be stapled to any part of the vessel the commander may deem fit; but commanders should be on their guard against pretended illness, and care should be taken in the removal of a convict from one part of the vessel to another, that he does not attempt to cast himself over-board. It should be borne in mind, that men meditating an escape are likely to be the quietest and best behaved, and that every one of them would rather die at once than have to go across the sea. They should not be allowed any the least possible means of injuring themselves or others, and should be made to feel that they have no chance of escape.

Strength of guards required.

Rule 13. When the number of convicts attached to a bel chain may be inconsiderable, the strength of the guard to be placed over it should be fixed by the magistrate as at present, with due advertence however to the character of the convicts. But when the chains shall have the full number of convicts specified in rule 7 fastened to them, there should be four burkundazes, or nujeebs, provided for each chain, so as to furnish one sentry day and night to be relieved every two hours; one duffadar to two chains; and one jemadar, when there are more than two chains. There will be besides six burkundazes or nujeebs on duty over the main guard, and even a larger number, should the magistrate consider it necessary, with reference to the character of the convicts or to other special reasons. When a small additional number of convicts is embarked at a second station and fastened to a chain already partly occupied, the magistrate at that station should supply such a guard, as with the number already on board will, in the proportion above fixed, be sufficient for the whole gang fastened to the chain. In cases where one or two convicts are embarked at a second station, and the guards already on board are considered sufficient, the magistrate at such station should send one additional burkundaz or nujeeb only, as in formal charge of the convict or convicts forwarded by him, and of

Guard to be under authority of commander.

the necessary papers to be delivered to the superintendent of the Alipore jail. The whole of the guard sent on board, should be placed under the immediate authority and control of the commander of the vessel, and required strictly to conform to all orders he may issue, he being responsible for the safe custody of the convicts.

Arms of burkundazes, and nujeebs.

Rule 14. Each burkundaz should be armed with a sword and shield, and each nujeeb with a musket. The latter should each be furnished with twelve rounds of ball cartridge for use when necessary; but to be kept at the main guard apart from the prisoners. All proper precautions should

Precautions regarding arms.

be taken to prevent the prisoners from gaining possession or making use of any weapons; and to this end the sentry on duty over the prisoners should be at each change directed to be very careful of whatever weapon he has with him, when he approaches the bel chains; and the duffadar should be directed to hand over his bayonet or sword to the sentry whenever he may have to stoop or move near to the prisoners, in order to unloose or fasten a

In the case of insubordination on the part of the convicts.

chain, or for any other purpose. *Rule 15.* Should any convict become insubordinate, the commander of the vessel shall be at liberty to reduce his rations for such time, and in such proportion, as he may think proper. In cases of gross insubordination, the circumstances should be recorded, and duly attested in the shape of a charge, to be laid before the superintendent of the Alipore jail, with a view, after due investigation, of punishing the offenders according to the circumstances of the case. *Rule 16.* The commander

should require one of his officers to see the rations distributed, to report complaints, and to maintain order and silence. *Rule 17.* On arrival off Calcutta, the convicts are not to be disembarked later in the day than one hour before sunset if the boats anchor below Fort point, or later than two hours before sunset if the boats are anchored above Fort point.

Rule 18. The above rules are also to be observed when, under special circumstances, convicts are sent from one station to another on government steamers. *Rule 19.* The commander of each government inland steamer or flat should be furnished with a copy of these rules for his guidance, whenever he may have occasion to bring down convicts to the Alipore jail, or to take them from one station to another under special circumstances.

Rule 20. The greatest care should be taken by the officers concerned to ascertain that the convicts to be embarked have no cord, or thread, or waxed silk, concealed on their persons, or in their bedding, clothing, &c., as they have been known to make use of these articles to cut their fetters. *Rule 21.* As it is a common practice amongst convicts to conceal flaws and cuts in their fetters by the use of cement, the commander of the steamer should cause all the fetters and ankle rings to be carefully scraped with a knife, or other sharp steel instrument, in his own presence, as soon as possible after the convicts are embarked. This process should be occasionally repeated during the voyage. C. O. Govt. Bengal, No. 562, January 29, 1856; and No. 2110, June 5, 1856.

2949. *Rule 1.* The following jails are to be considered as receiving jails in the first instance for all prisoners, sentenced to transportation in the districts specified:

Allyghur—for the districts in the Delhi and Meerut divisions;

Furruckabad—for the districts in Rohilkund;

Cawnpore—for the districts in the Agra Division (except Furruckabad);

Allahabad—for Bundelcund and the districts in the Allahabad division (except Cawnpore);

Benares—for Juanpore;

Ghazeepore—for Azimghur and Goruckpore.

Rule 2. The magistrates of the several districts are to forward their convicts to the receiving jails at such times and in such numbers as may be most economical and convenient, accompanied with the usual warrant and descriptive roll. The magistrates in the several Delhi districts are to forward them in the first place to the magistrate of Delhi, who is to receive charge of them, and send them on with the convicts from his own jail. In the same way the magistrate of Meerut is to receive charge of the prisoners from the Dhoon, Mozuffernuggur and Seharunpore; the magistrate of Bareilly of those from Bijnore and Moradabad; the magistrate of Agra of those from Muttra; and the magistrate of Futtehpore of those from Banda and Humeerpore. *Rule 3.* On the 1st January in each year, and on the first day of each following quarter, the prisoners who have been collected at Allyghur and Furruckabad respectively, are to be forwarded to Cawnpore, from whence they are to proceed, together with the Cawnpore prisoners, in one body to Allahabad. *Rule 4.* From Allahabad and the other river stations, the convicts are to be despatched to Calcutta per steamer, as opportunity may offer; the magistrates communicating direct for this purpose with the

Officer of vessel to see the rations distributed, &c.

Disembarkation of convicts.

Same rules, if convicts be sent from one station to another

Copy of rules to be furnished to commander.

No cord, thread, or waxed silk, to be allowed to convicts.

Fetters and rings to be scraped with a knife in order that flaws may be discovered.

Mode of transmission in Western provinces; and receiving jails.

agent for government steamers at Allahabad. *Rule 5.* Previous to each despatch, the magistrate of each river station is to furnish the superintendent of the Alipore jail direct with a statement shewing the number of prisoners to be expected, in order that due provision may be made for their reception. This statement is to be drawn out in the usual form [*i. e.* the statement C of para. 2929], with an additional column to shew the district from which the prisoner was originally sent, and is to be headed "statement of convicts sentenced to transportation for life, despatched on the—of—185—to Calcutta from the jail at——."—A copy of each statement is to be forwarded for record in the office of the secretary to government. Magistrates, forwarding convicts under these orders for transmission to the river stations, and ultimately to the Alipore jail, are to be careful to send with each such convict a descriptive roll, in the form annexed(a) and also copy of the warrant under which he is confined. These documents are to accompany the prisoners and to be delivered with them to each magistrate, into whose charge they are committed on the way. The magistrates of Allahabad, Mirzapore, Benares, and Ghazceppore, are to abstain from forwarding any convicts to Alipore unless they have received the above mentioned papers regarding them. Govt. Order, *W. P.* September 12, 1845, and January 8, 1846.

Precautions to be used in order to ensure safe custody during transmission.

2950. Convicts of dangerous character, on their passage by water from one station to another, should be confined entirely to the boat, or should be permitted to land only in small numbers at a time, if it is necessary to remove them occasionally on shore. The general use of handcuffs and neckchains would be objectionable, as endangering the lives of the convicts in case of accident to the boat by fire or otherwise; but in special instances they are indispensable; and the practice is not therefore prohibited, but is to be resorted to only in cases of emergency. The precautions for security should be adapted in each instance to the

(a) List of prisoners sentenced to transportation beyond seas, despatched from the jail to the superintendent of the Alipore jail.

1.	3.	3.	4.	5.	6.	7.	8.	9.	10.	11.		12.	13.	14.	15.	16.	17.
Current number of prisoner.	Name of the prisoner.	Number of session judge's or nizamat adawlut's warrant.	Register number of prisoner in zillah jail.	Age.	Father's name.	Place of residence, zillah, pergunnah, and village.	In what zillah, and by what authority sentenced.	Crime, term and date of sentence.	Date of transfer in transportation or banishment to Alipore.	DESCRIPTIVE ROLL.		Single, or married, and what family.	Religion, caste, trade, or profession.	Read, write, what language.	On prisoner's connections, former convictions, and course of life.	On prisoner's temper and disposition and conduct in prison.	Remarks.
										Features, complexion and marks.	Height.						
											Feet.	Inches					
1	Goorbuckh alias Goordyal.	91	143	25	Dheera.	Delhi : Golanoo : Sona.	Agra Nizamut Adawlut.	Accomplice in thuggee; for life with labor in irons; May 21, 1846.	July 9, 1846.	Round, dark, pox-marks and several moles on the face, one mole on the nose, &c.	5	3	...	Hindoo; Bunjara; Thuggee.	...	Originally convicted and sentenced on the 7th September 1842 to imprisonment for life in banishment to the Agra jail, which was enhanced on the 21st Mar 1846 to transportation for attempting to strangle a fellow-prisoner.	Very turbulent and misbehaved.

number and character of the prisoners; and the magistrate must take such measures as appear necessary for preventing attempts on the part of the prisoners to over-power their guard, without subjecting the prisoners to more restraint than is requisite for their safe custody. C. O. No. 161 of vol. 1.

2951. The rules quoted in paragraph 2634 are applicable to prisoners under removal. For an account of a lamentable accident which occurred for want of due precautions against danger from fire, see C. O. Govt. *Bengal*, No. 247, January 6, 1853.

Precautions
against fire.

2952. Officers are not to forward a prisoner charged with a heinous offence from one station to another under such inadequate custody as the charge of a single burkundaz. The crime of which a prisoner under such despatch is accused should also be invariably written in the purwana meant to accompany the despatch. C. O. No. 120 of vol. 3.

Single burkun-
daz not a sufficient
guard.

2953. It having recently come to the knowledge of the government that prisoners transmitted from one jail to another are occasionally subjected to unnecessary suffering, the following instructions were laid down for their safe custody and health in transit. *Rule 1.* Every prisoner before being sent on a march, must be supplied with a blanket, a suit of jail clothing, and such drinking and cooking vessels as are necessary. *Rule 2.* No fetters, bonds, or ligatures, other than are absolutely necessary to prevent escape, should be employed; and immediately that convicts are again safely lodged in jail, all hand chains should be removed. *Rule 3.* While on the march hand-chains may be used; and, if there is an armed guard sufficient to prevent any forcible attempt to escape, it would be better simply to couple prisoners together, than to fasten them all to a single chain at night, a proceeding which ought never to be necessary. *Rule 4.* Aged and sick prisoners should not be transferred at unhealthy seasons. In the event of its being absolutely necessary, suitable means must be provided to carry those who are unable to walk, and to take care that the carriage so provided is not made use of by the guards. Natives generally are so indifferent to sickness and suffering that do not affect themselves, and have so little sympathy with the afflictions of others, as to render it necessary to adopt the most stringent measures to prevent any abuse of the means provided for the relief of those who really require such aid. *Rule 5.* In every pal or hut in which prisoners on the line of march are confined at night, a closed lantern should be suspended. *Rule 6.* Sick prisoners must always travel separately, and are not to be attached to any other convicts while they remain sick. *Rule 7.* In all practicable cases water is to be preferred to land carriage. *Rule 8.* All particulars connected with the safe custody and health of prisoners in transit must be entered by the despatching officer in a certificate to be given to the head man of the guard escorting them. This certificate must be countersigned by every magistrate and deputy magistrate through whose station the prisoners pass *en route*, and should eventually be returned to the despatching officer, with the signature of the magistrate to whose jail the prisoners have been consigned. C. O. Insp. Jails *L. P.* No. 45, May 19, 1856.

Treatment of pri-
soners in transit

2954. An instance having recently occurred of a file being discovered on the person of a convict, who had been transferred to another jail; and it being evident that this implement for attempting to escape had been procured during the journey; it is directed that, whenever

Prisoners to be
searched daily on
the line of march.

convicts are forwarded from a jail to any other district, the officer in charge of the escort is to be held individually responsible for the rigid search of the persons and clothes of the prisoners at the end of every day's march. The greater facilities, which a journey affords for obtaining possession of prohibited articles, demand increased vigilance from the guard, any dereliction of duty on whose part should be severely punished. C. O. Insp. Prisons *W. P.* No. 48 of 1854.

Penal settlements.

2955. All convicts sentenced to transportation are to be sent to such of the British settlements of Asia, the island of Mauritius, or its immediate dependencies, as government appoints; and are also liable to be employed at any places within the limits of the settlement, to which they are sent, which are from time to time fixed by the local administration. A power is further vested in government of transferring convicts from one place to another in such settlements; and such transfer is authorized as often as it is found requisite. Previously to ordering such transfers, the governor general in council is to consult the local administration upon the propriety of allowing any convicts to be exempted from removal, whose good conduct has merited this indulgence, or who, from sickness and infirmity, are not fit objects to be removed. Reg. IX. 1813, sect. 2, cl. 3. Reg. XIV. 1816, sect. 15.

Prisoners sentenced to perpetual imprisonment in Alipore jail may apply to be transported.

2956. Whenever any convict, sentenced to imprisonment for life in the Alipore jail, is desirous of obtaining a commutation of his sentence to transportation for life, he is to make known his wishes to that effect, either verbally or in writing, to the superintendent or other officer in charge of the jail; who is to call such convict before him, and after taking down his request in writing, to be signed by the said convict and attested by two or more respectable persons, is to report the case for the orders of government, stating at the same time any objections which, in his opinion, exist to the commutation of the sentence, on account of the dangerous character of the convict, or other circumstances. Reg. I. 1828, sect. 2, cl. 1.

Government may commute the sentence accordingly.

2957. It is competent to the governor general in council, on consideration of such report, to commute the sentence passed upon the convict of imprisonment for life in the Alipore jail to transportation for life to any of the British settlements in Asia, and the sentence so commuted is to be carried into effect in the same manner as sentences of transportation beyond sea for life are enforced. Reg. I. 1828, sect. 2, cl. 2.

Punishment for return from transportation in such case.

2958. The provisions contained in sect. 5, Reg. XII. 1818(a) are hereby declared applicable to convicts, whose sentences are commuted under the foregoing clause, and who escape from the place of their transportation, and return without permission to any part of the Company's territories. Reg. I. 1828, sect. 2, cl. 3.

(a) This is evidently an error,—for the section cited allows only extra imprisonment (with stripes) for two years, which must be inoperative in cases of prisoners sentenced to imprisonment for life. Probably cl. 2, sect. 9, Reg. LIII. 1803 is intended, which allows sentence of death.

SECTION XIII.

OF RELEASE OF PRISONERS.

2959. All orders for receiving prisoners into jail, and for their final discharge, are to be signed by the magistrate or his assistant, and addressed to the jailor. Jail rules, sect. 10, para. 1.

Mode of.
Orders for discharge.

2960. When the sentence of any prisoner may expire, the jailor is to produce him together with his warrant, and registers of admission and release. The releasing officer will sign the order for release on the back of the warrant, and affix his initials and the date in each register. C. O. Insp. Prisons *W. P.* No. 3, August 28, 1845.

Rules for release of prisoners on expiry of sentence.

2961. No prisoner is to be released on any occasion during the night; and all prisoners ordered to be discharged are to be brought to the magistrate's cutcherry, and to receive their discharge in the presence of the magistrate or his assistant. Jail rules, sect. 10, para. 2.

Hour and place of release.

2962. When a convict sentenced to temporary imprisonment is in confinement, at the approach of the period fixed for his discharge, in a jurisdiction different from that in which he was committed for trial, he is to be sent back (with the warrant containing his sentence, or an authenticated copy of it, if the warrant includes other convicts not sent at the same time) to the magistrate of the jurisdiction in which he was committed for trial; unless the magistrate having charge of the convict, on information of his intended place of residence, or for any other special reason, judges it proper to discharge him in his own jurisdiction, or to send him for discharge to the magistrate of a different jurisdiction, in which last case he is to be sent to the magistrate of such jurisdiction; and the magistrate to whom the convict is sent in such cases, is to carry into effect the warrant for his discharge, taking bail or not, as therein directed; or in particular cases requiring bail, though not directed in the warrant, if, from any information before him of the prisoner's dangerous character, it appears indispensably necessary to adopt this precaution. Provided that in all such cases the prisoner, with a full report of the magistrate's information respecting him, is to be brought before the session judge for his orders.—The magistrate having charge of convicts to be discharged in another jurisdiction under this rule, is to send them in such custody as appears sufficient, and with or without fetters, or with an iron on one leg only, as he deems proper, to the magistrate by whom they are to be discharged, so as to reach him before the expiration of their respective sentences: and, whenever a convict has been committed for trial in a jurisdiction different from that to which he is sent for the purpose of being discharged, or has resided before he was apprehended in a different district from that in which he was committed, and also from that in which he is sent for discharge, notice is at the same time to be given to the magistrate both of the jurisdiction in which he was committed for trial, and of that in which he formerly resided: and such magistrates and the police officers, being duly advised of their release, are to take the requisite precautions to watch the conduct of the persons discharged, especially of such as appear to be of a dangerous character, and to guard against the repetition of criminal offences by

Magistrate how to proceed, if the prisoner is confined in a jurisdiction different from that in which he was committed for trial.

them. The magistrate sending convicts from one station to another under these instructions, is to furnish them with a sufficient allowance for their subsistence on the way; but the allowance for one month's maintenance, to which convicts are entitled under sect. 25, Reg. IX. 1793 [see below], is to be paid to them by the magistrate who discharges them; and he is required to be particularly careful that such allowance is, in all instances, received without deduction by the person entitled thereto. C. O. No. 66 of vol. 1.

Prisoners discharged to be furnished with certificate;

2963. All prisoners discharged by the magistrate or his assistant are to be furnished with a certificate or roobakaree, under his official seal and signature, specifying the following particulars, *viz.* on what ground or charge the prisoner was apprehended, and at what period; the result of any enquiry made respecting the prisoner; and, if brought to trial on any specific charge, the result of such trial, and the sentence passed upon him, together with the execution of the sentence, if he has been convicted and punished; the order of the prisoner's discharge, by whom passed, and on what date; and, if security has been given by the prisoner for his future appearance or good behaviour, the names of the sureties, and amount in which they were bound respectively. C. O. No. 116 of vol. 1.

and a pass;

and with his own or other clothes.

2964. If necessary, a pass should be given to a prisoner on his release, to prevent his being apprehended as a runaway convict. On leaving the jail, each prisoner is to be supplied with the clothing that was taken from him on admission; or with some plain and unmarked suit of common cloth, old or new, as may be available, taking care that he has no article of clothing about him marked or numbered as a prison suit. C. O. Insp. Prisons W. P. No. 25, April 1, 1851.

Means of preparing certificate.

2965. Magistrates are furnished with copies of the futwas of law officers in all cases of sentences passed by the sessions court and the nizamat adawlut, expressly to enable them to prepare this certificate. C. O. No. 185 of vol. 1.

Subsistence money to be given to discharged prisoners.

2966. The magistrate is to pay to all persons released from jail, after an imprisonment of six months or upwards calculating from the date of their sentence, who appear to be in actual need of such assistance, a sum sufficient to maintain them for one month. The sum to be paid to each individual is to be regulated by his situation in life, but is in no case to exceed five rupees; and in every instance is to be confined as much within that amount as may be consistent with the purpose for which the allowance is granted. *Beng. Reg. IX. 1793, sect. 25. Ced. Prov. Reg. VI. 1803, sect. 25.*

2967. Diet money should be given to every released prisoner at the rate of 6 pie per day for the number of days that will enable him to reach his home. C. O. Insp. Prisons W. P. No. 25, April 1, 1851.

For reward.

Magistrate may report for remission of sentence convicts deserving of such reward.

2968. If any convict, under sentence of imprisonment, from his uniform good behaviour, and industrious performance of the work assigned to him, or from his meritorious conduct in preventing the escape of other prisoners, or rendering any other public service, appears to the magistrate having charge of him to deserve a remission of the further punishment to which he is liable under his sentence, or of any part of it; a report of the circumstances of the case, with a copy of the sentence passed upon the prisoner, is to be transmitted by the magistrate through the session judge to the government,

who is empowered to remit the further punishment adjudged against the prisoner, in whole or in part, if there appears to be sufficient cause for it. Reg. XIV. 1816, sect. 10, cl. 1. C. O. Govt. *Bengal*, No. 1072, October 10, 1844, para. 7.

2969. A full report of the circumstances of the case is to be sent, so as to enable the government to form a judgment upon the propriety of granting the remission of punishment which is proposed. C. O. No. 98 of vol. 1.

Full report re-
quired in such
cases.

2970. In cases of short imprisonment adjudged by the magistrate or his assistant, wherein the object would be defeated by the delay attending a reference to government as directed above, the magistrate is empowered to order the discharge of a prisoner, who appears to deserve a remission of punishment on the grounds specified; provided that his reasons for every such order are recorded on his proceedings, to be submitted, when required, for the information of the session judge. Reg. XIV. 1816, sect. 10, cl. 2.

Magistrate may himself order discharge in certain cases.

2971. Applications for the release of prisoners on account of good conduct, or any other cause than bodily infirmity, are to be made through the inspector of prisons (or, where his authority does not extend, through the controlling authority), and the nizamat adawlut, to the government, with whom alone rests the power to order release in such cases. Notification Govt. W. P. No. 3200, June 6, 1848.

Applications how to be made in H. P.

2972. In all cases when great and mortal sickness prevails in a jail, or when from causes incidental to the place short-term prisoners are liable to fall victims to any disease under which they are laboring, and which has been contracted in their place of imprisonment, magistrates are vested with a discretionary power of release, without reference to higher authority. In every instance in which such discretionary power is exercised, it must be based on a certificate from the officer in charge of the medical duties of the jail, stating briefly the nature of the disease from which the prisoner is suffering, and his belief that there is no reasonable chance of recovery in the prison, or that the said prisoner will certainly die if he remain in confinement. Or, in the event of the occurrence of severe and fatal epidemic disease to which all the inmates of the jail are alike exposed, and from which all are equally liable to suffer, the same discretionary power may be exercised by magistrates towards short-term prisoners whose period of sentence has nearly expired, and who are not actually labouring under disease, upon the written representation of the medical officer that the lives of such prisoners are in imminent hazard from their remaining in the jail. Every instance in which the discretionary power above mentioned is exercised by a magistrate, must be immediately reported to the inspector of jails in the form annexed, (a) and the

For infirmity.

Rules *L. P.* for release of short-term prisoners, when in danger of death ;

or in cases of severe and fatal epidemics.

(a) *Statement of short-term prisoners released under the operation of C. O. No. 65, dated 2nd April 1857,*
from the jail of

[illegible]

cause and date of the release must be carefully entered in the prison register, and attested by the signature of the magistrate. The object of this order is that a short sentence for a simple misdemeanor, or for any crime which does not bear the stamp of such moral turpitude as to justify the risk of forfeiture of life from accidental causes incidental to imprisonment, may not be liable to become in any circumstances a sentence of death. While, therefore, the interests of humanity require the prompt exercise of the discretionary power now vested in magistrates in all cases of the nature indicated, the equally powerful claims of justice demand that that power shall only be employed when absolutely and urgently required. C. O. Insp. Jails *L. P.* No. 65, April 2, 1857.

In cases of extreme sickness magistrate may remove.

2973. Officers in charge of jails are authorized to transfer sick prisoners in extreme cases from one jail to another on their own responsibility, reporting the circumstances to government as soon as possible. C. O. Govt. *Bengal*, No. 1030, June 9, 1847.

Report may be made for release of blind or decrepid prisoner.

2974. When a prisoner is suffering under blindness or decrepitude, or other incurable infirmity, such as to incapacitate him, if released, from the further commission of crime, and the release of whom therefore would not be attended with mischief or danger, a report is to be submitted in the *Lower* provinces to government by the magistrate through the session judge, with the sentiments of the latter, as to the propriety or otherwise of the clemency of government being extended to such person. C. O. No. 52 of vol. 2. C. O. Govt. *Bengal* No. 1072, October 10, 1844.

Form of such application.

2975. Such applications are to be made in the form given above. In col. 10 of this statement, the civil surgeon is to give his opinion in the form of a declaration: the magistrate is to fill up col. 11 with his opinion and such observations as the case appears to call for, particularly as regards the general conduct and character of the prisoner, and to forward the statement to the session judge; who, provided he agrees with the magistrate and surgeon, is to enter his opinion and remarks (in a column to be added for that purpose) and to submit the original statement for the consideration and orders of the court, retaining a copy of it for record in his own office. The magistrate is also to send with the application a copy of the warrant under which the prisoner is confined. C. O. No. 218 of vol. 2. C. O. No. 9 of vol. 3. *W. P.*

Opinion of surgeon required in cases of blindness.

2976. Officers in charge of jails are warned of the practice prevalent among convicts, with a view to obtain their liberation from jail, of causing temporary, and possibly permanent, loss of vision by applying lime and other injurious substances to their eyes. In applications for the release of prisoners afflicted with blindness, the surgeon is to record his opinion as to the origin of the calamity, and to state distinctly whether, from the appearance and nature of the malady, there is any reason to suspect that it has been designedly produced, or is purely the result of misfortune. C. O. Nos. 219 *W. P.* and 220 *L. P.* of vol. 3.

Power of release in *W. P.* vested in nizamut adawlut in certain cases.

2977. Act XVIII. 1844 does not interfere with the privilege heretofore exercised by the nizamut adawlut, under express instructions from the local government, of releasing blind and infirm prisoners within certain specified limits. C. O. No. 190 of vol. 3. *W. P.*

Applications in *W. P.* for release for infirmity to be made through inspector.

2978. All applications for the release of blind or infirm prisoners, from jails under the control of the inspector of prisons, are to be made to him by magistrates or other local officers in charge. The inspector is authorized to release all prisoners whose sentence of

imprisonment does not exceed 3 years, and whose bodily infirmity has been certified. He is to forward to the nizamut adawlut applications for the release of blind and infirm prisoners, whose sentence exceeds 3 years; but he is allowed to reject altogether such as may appear unworthy of consideration, or open to rejection, by reason either of the enormity of the convict's crime, the turbulence of his character, or other cause. The nizamut adawlut is to issue final orders regarding all blind and infirm prisoners, whose sentence does not exceed 5 years; and is to forward to government cases in which such prisoners, though sentenced to periods of imprisonment beyond 5 years, are deemed proper objects of mercy. From districts which are under the court, but not under the inspector of prisons, applications are in all cases to be submitted through the session judge, or other controlling authority, direct to the nizamut adawlut. Notification Govt. *W. P.* No. 3200, June 6, 1848.

Inspector may release if sentence be for less than 3 years;

but he may reject for sufficient cause.

Nizamut adawlut may release if for less than 5 years.

Other cases to be reported to government.

If district is not under inspector

2979. Neither blindness, nor any other physical infirmity can entitle to the indulgence of release, before the expiration of the full term of his sentence, a prisoner convicted of murder, wounding with intent to murder, dacoity, highway robbery, burglary, theft, cattle stealing, child stealing, knowingly receiving stolen or plundered property, arson, rape, or perjury. Blindness, or loss of the use of any of the limbs, or other incurable disease, will ordinarily entitle prisoners to their release,—1. if they have not been convicted of any of the above mentioned crimes;—2. if they have never been guilty of unruly conduct, or other gross breach of prison rules, during the time they have been in confinement;—3. if the infirmity which forms the ground of application for release has not in any way been produced or aggravated by any wilful act on the part of the prisoner. *C. O. Insp. Prisons W. P.* No. 31, June 21, 1852.

Rules under which such applications are to be considered.

2980. A session judge is not competent to authorize the release from confinement of any convict under sentence of imprisonment, on security or otherwise, without the previous sanction of the nizamut adawlut [or government];* but whenever the bodily health of a prisoner is such as, in the opinion of the civil surgeon, to render his temporary removal from the jail or hospital absolutely necessary, either for his own recovery, or if the disorder be of a contagious nature for the safety of other prisoners, or for any other good and sufficient cause, and the emergency of the case does not admit of a previous reference to government, the proper course is to authorize and direct the magistrate to remove him to any suitable building, or to a neighbouring jail, and to report the circumstances without delay to the court. *Const. No. 1016.*

Session judge cannot release on account of ill health, but may authorize removal,

* Except in *W. P.* as above.

2981. A session judge is not competent to authorize the release from confinement, on security or otherwise, of any convict under sentence, for the purpose of apprehending offenders. *Const. No. 1013.*

nor for the purpose of apprehending other offenders.

2982. Except under the preceding rules, a magistrate is not competent to release prisoners before the expiration of their sentences, on account of their state of health, without the authority of government. *Const. No. 841.*

Magistrate cannot release prisoners on account of ill health, except under these rules.

2983. The permission of the government should be obtained for the removal to the insane hospital of a prisoner who has become insane while under sentence. *N. A. R.* vol. 6, page 80.

Removal to the insane hospital of a prisoner under sentence.

SECTION XIV.

OF SECURITY PRISONERS.(a)

Cannot exempt
themselves from
labor.

2984. Security prisoners cannot be exempted from labor by the payment of a fine. Const. No. 881.

To be employed
in the district on
public works.

2985. In conformity with the spirit of sect. 10, Reg. XXII. 1793 (*Ced. Prov.* sect. 10, Reg. XXXII. 1803) the magistrate is at liberty to employ prisoners, confined till they furnish security for their future good behaviour, on works of a public nature. He must, however, be careful not to employ them at any great distance from the sudder station, where they might be subject to difficulty in procuring sureties, and is on no occasion to send them beyond the boundaries of his district. C. O. No. 72 of vol. 1. Const. No. 160.

Distinction to be
made in regard to
labor

2986. Persons in confinement under requisition of security, in pursuance of sect. 9, Reg. VIII. 1818, as of dangerous and irreclaimable character for theft or robbery, should be subjected, as hitherto, to public labor; but all others detained for security as vagrants or otherwise, should be subjected only to private labor. C. O. No. 238 of vol. 1.

To be separated
from other prison-
ers, and confined
without fetters.

2987. All prisoners detained in custody for security only, more especially such as are not confined as notorious dacoits or other robbers of dangerous character, are to be kept distinct, as far as possible from prisoners convicted of specific offences; and are to be confined without fetters, except when the magistrate may judge the use of them requisite to prevent the escape of particular prisoners; and in such case the magistrate is to issue a written order for that purpose to the jailor. C. O. No. 116 of vol. 1.

Not to be remov-
ed to another zillah
without sanction of
government

2988. No prisoner detained under requisition of security in the zillah, in which he has been accustomed to reside, or in which he has been apprehended, is to be removed to the jail of a different zillah, unless the government sanctions the removal, in compliance with the prisoner's own request, and with a view to enable him the more easily to furnish the security required. Reg. VIII. 1818, sect. 6, cl. 1. Reg. IV. 1825, sect. 3.

even to act as ap-
provers.

2989. The removal of prisoners confined in a criminal jail on a requisition of security for good conduct to another district, for the purpose of being induced to give evidence as approvers before the officers appointed for the suppression of dacoity, is illegal. But if such prisoners have no objection to be removed to the jail of another district for the sake of giving evidence, government may sanction their removal. Const. No. 1240.

except in emer-
gent cases.

2990. The foregoing rule, however, is not to be construed to preclude the removal of such prisoners from one station to another, in cases in which a due regard to the health of the prisoners, or to their safe custody, or other emergent circumstances, may in the judgment of the government, render that measure necessary or advisable. Reg. VIII. 1818, sect. 6, cl. 2. Reg. IV. 1825, sect. 3.

(a) For rules regarding the confining and release of security prisoners, see sect. 2, chap. 1, book 5, "of security for good behaviour."

SECTION XV.

OF THE CIVIL JAIL.

2991. The control of the civil jail is vested in the magistrate: he is to visit the civil jail once in every week; and to redress all well-founded complaints of ill-treatment which are preferred to him by the prisoners against the jailor, or other person having charge of them. He is also to be attentive at all times to the health and cleanliness of the prisoners, and to be careful that the surgeon attends and administers to the sick in the civil jail, in like manner as he is required to attend the criminal jail. Reg. III. 1826, sect. 2.

Control is vested in magistrate:

2992. As the magistrate is responsible for the safe custody of the dewanny as well as the foudaree prisoners, the appointment and removal of native officers, attached to both jails, are vested exclusively in him. Const. No. 442.

and appointment of native officers.

2993. The session judges, who are directed to visit the criminal jails and to issue to the magistrates such orders as appear to them advisable for the better treatment and accommodation of the prisoners, are likewise to visit the civil jails; and are empowered to issue such instructions, being consistent with the general regulations, as appear requisite for the better treatment and accommodation of the prisoners in the jails, or for inquiring into, and redressing, if established, any alleged grievance or undue restraint during their imprisonment. Reg. IV. 1816, sect. 4.

Judge to visit, and to issue the necessary instructions.

2994. The judge has no right to be considered as the medium of communication on the part of the magistrate with the civil prisoners; nor can the magistrate constitute his office the channel of communication between the judge or collector and any prisoner confined under civil process. Const. No. 1021.

Communication of prisoners with the magistrate, and judge, or collector.

2995. As collectors are empowered by sect. 20, Reg. VIII. 1831 to execute their own awards, their orders for the confinement and release of defaulters need not pass through the civil judge; and the warrant of a collector is sufficient authority to the civil jailor to receive or discharge a prisoner. C. O. No. 131 of vol. 2.

Collector empowered to imprison in civil jail, or to discharge.

2996. The native judges, holding their courts within the jurisdiction of a joint magistrate residing at any place other than the sudder station of the zillah court, on forwarding any prisoners to the joint magistrate for confinement in the civil jail, are, at the same time to report the circumstances to the judge, who is to confirm or cancel the order as appears just and proper. C. O. No. 143 of vol. 2.

Native judges at subordinate stations.

2997. It is not competent to a judge to release a civil prisoner solely on the ground of illness, without the consent of the party at whose instance he was confined. Const. No. 1114.

Judge cannot release on account of illness.

2998. The magistrate is vested with authority to punish, on a summary inquiry, the offences specified in the following section of this regulation. Reg. III. 1826, sect. 3.

The magistrate may punish prisoners for culpable

behaviour towards
the jail officers ;

2999. Refractory behaviour by any prisoner confined under process of the civil court, such as resistance to the jailor, guards, or other public officers in the regular discharge of their public functions ; abusive language to any such officers, and generally any culpable behaviour towards them, which does not involve a serious act of criminality, such as cannot be duly punished by the magistrate, and should therefore be brought before the sessions court. Reg. III. 1826, sect. 4, cl. 1.

disorderly con-
duct, attempt to
escape, &c.

3000. Any other instance of disorderly conduct by a prisoner, such as riot, attempt to escape, conspiracy with other prisoners with a view to escape, or for the purpose of insurrection, or for any other unlawful or prohibited purpose, abusing or assaulting another prisoner, and generally any misconduct committed by a prisoner whilst in custody, which, under the regulations in force, or from its aggravated nature, does not exceed the competency of the magistrate, and therefore is more properly cognizable by the sessions court. Reg. III. 1826, sect. 4, cl. 2.

Escape involves
attempt to escape.

3001. A person sentenced to imprisonment in the civil jail by the collector in a case of illicit opium, effected his escape, but was re-apprehended. Held, that as every escape must involve an attempt to escape, he should be dealt with agreeably to the above provisions. Const. No. 486.

Power of magis-
trate to punish such
offences,

3002. The powers vested in the magistrate for the punishment of the offences specified in the preceding section, which on a summary inquiry appear to have been committed by any of the prisoners confined under civil process, are declared to be as follows, due regard being had to the nature of the offence, the condition of the prisoners, and every other just consideration applicable to the case. Reg. III. 1826, sect. 5, cl. 1.

nature of punish-
ment,

3003. The offences specified in the preceding section are punishable by close confinement, or by a reduction of the prisoner's allowance for any term not exceeding two months ; the allowance to be in no case reduced below what is consistent with the prisoner's support ; and the difference between the prisoner's full allowance, and the reduced rate, to be carried to the credit of the government as a fine. Reg. III. 1826, sect. 5, cl. 2.

Magistrate can-
not detain a person
entitled to release
from civil process.

3004. If a civil prisoner, sentenced to a reduction of his allowance for breach of prison rules, satisfies his creditor with a view to obtain his release, the magistrate cannot commute the punishment so awarded to fine and imprisonment ; but the prisoner, on payment of the demand against him, must be immediately released. Const. No. 426.

Rule of proce-
dure in such cases,
* *v. para.* 2737.

3005. The rule for conducting such summary inquiries, and recording such sentences, and for their inspection by the session judge, is the same as that prescribed with regard to prisoners confined in the criminal jails by sect. 8, Reg. XIV. 1816.* Reg. III. 1826, sect. 5, cl. 3.

Limitation of
power of magis-
trate over civil pri-
soners.

3006. Provided, however, that nothing in this regulation is construed to give the magistrate any jurisdiction whatever over the question of a civil prisoner's liability to confinement, or title to release, with reference to the civil process under which he has been sent to jail ; or to preclude the judge of the civil court, or his ministerial officers, European

or native, authorized or deputed by him, from visiting the civil jail; or the judge from summoning any civil prisoner to his court upon matters connected with the civil process under which he is confined, or for other judicial purpose. Reg. III. 1826, sect. 6.

3007. A civil prisoner cannot be confined in fetters, unless he is suffering under a criminal sentence for having broken jail; in other words, fetters cannot be imposed on a civil prisoner merely to ensure his safe detention in jail. Const. No. 624.

Prisoner not to be confined in fetters to ensure custody.

3008. A brief explanation is to be given of the cause of detention, when any prisoner has been confined in the civil jail for one year. The magistrate having the mere custody of the prisoner cannot give this information, which must be sought from the civil judge or collector under whose order the prisoner is confined: when, therefore, the statement regarding the civil jail is prepared, the magistrate is to forward it to those officers, that they may insert on the back of it the required explanation. C. O. No. 139 of vol. 2.

Explanation to be given of prisoners confined for one year.

SECTION XVI.

OF STATE PRISONERS.

3009. When the reasons stated in the preamble of this regulation(a) seem to require that an individual should be placed under personal restraint, without any immediate view to ulterior proceedings of a judicial nature, a warrant of commitment under the authority of the governor general in council, and under the hand of the secretary to government, is to be issued to the officer in whose custody such person is to be placed. Reg. III. 1818, sect. 2, cl. 1.

By what authority state prisoners are to be confined.

3010. The warrant of commitment is to be in the following form:—
To the (*here insert the officer's designation*).

Form of warrant to be issued.

Whereas the governor general in council, for good and sufficient reasons, has seen fit to determine that (*here insert the prisoner's name*) shall be placed under personal restraint at

(a) The preamble of the regulation is as follows:—"Whereas reasons of state embracing the due maintenance of the alliances formed by the British government with foreign powers, the preservation of tranquillity in the territories of native princes entitled to its protection, and the security of the British dominions from foreign hostility and from internal commotion, occasionally render it necessary to place under personal restraint individuals, against whom there may not be sufficient ground to institute any judicial proceedings, or when such proceeding may not be adapted to the nature of the case, or may for other reasons be unadvisable or improper; and whereas it is fit that, in every case of the nature herein referred to, the determination to be taken should proceed immediately from the authority of the governor general in council; and whereas the ends of justice require that, when it may be determined that any person shall be placed under personal restraint, otherwise than in pursuance of some judicial proceeding, the grounds of such determination should, from time to time, come under revision; and that the person affected thereby should at all times be allowed freely to bring to the notice of the governor general in council all circumstances relating, either to the supposed grounds of such determination, or to the manner in which it may be executed; and whereas the ends of justice also require, that due attention be paid to the health of every state prisoner confined under this regulation, and that suitable provision be made for his support, according to his rank in life, and to his own wants, and those of his family; &c."

(*here insert the name of the place*), you are hereby required and commanded, in pursuance of that determination, to receive the person above named into your custody, and to deal with him in conformity to the orders of the governor general in council, and the provisions of Reg. III. 1818.

Fort William, the —————

By order of the governor general in council,
A. B.

Reg. III. 1818, sect. 2, cl. 2.

Secretary to Government.

Such warrant
sufficient authority
for detention of
prisoner;

3011. Such warrant of commitment is to be sufficient authority for the detention of any state prisoner in any fortress, jail, or other place within the territories subject to the presidency of Fort William. Reg. III. 1818, sect. 2, cl. 3.

whether within
the jurisdiction of
supreme court or
not.

3012. The warrant of commitment of any state prisoner under Reg. III. 1818 may be directed to the sheriff of the jail of any of the supreme courts of judicature established by royal charter in the territories under the government of the East India Company, or to the commandant of any fortress, or to the officer in charge of any jail or other place, in which it is deemed expedient that such state prisoner be confined, in any part of the said territories; and such warrant is to be sufficient authority for the detention of such state prisoner in the fortress, jail, or other place mentioned in the warrant. Act XXXIV. 1850, sect. 1.

Reg. III. 1818
extended to su-
preme court juris-
diction.

3013. Reg. III. 1818 is extended and applied to every sheriff, commandant, or officer having any state prisoner in custody, under the said regulation, as explained and extended by this Act. Act XXXIV. 1850, sect. 2.

Former warrants
made legal.

3014. Any state prisoner now confined under any such warrant within the jurisdiction of any of the said supreme courts, under the warrant of the governor general in council, is to be deemed to have been lawfully committed thereunto. Act XXXIV. 1850, sect. 3.

Officer in charge
of such prisoner to
make periodical
reports to govern-
ment.

3015. Every officer, in whose custody any state prisoner is placed, is on the first of January and first of July of each year, to submit a report to the governor general in council, through the secretary to government in the political department, on the conduct, the health, and the comfort of such state prisoner, in order that the governor general in council may determine whether the orders for his detention shall continue in force or be modified. Reg. III. 1818, sect. 3.

If prisoner is in
custody of magis-
trate, the session
judge is to visit
him;

3016. When any state prisoner is in the custody of a magistrate, the session judge is to visit such state prisoner, and to issue any orders concerning his treatment, which appear advisable, provided they are not inconsistent with the orders of the governor general in council issued on that head. Reg. III. 1818, sect. 4, cl. 1.

and to make peri-
odical reports.

3017. The session judge is to report to government half-yearly on the situation of prisoners confined in the jail, or otherwise in restraint, under the direct orders of government; noticing at the same time whether they are charged with crimes against the state, or confined on any other ground. C. O. No. 48 of vol. 1; and No. 7 of vol. 3, para. 1.

If prisoner is in
custody of any
other officer, the

3018. When any state prisoner is placed in the custody of any public officer not being a magistrate, the governor general in council is to instruct either the magistrate, or the session

judge, or any other public officer, not being the person in whose custody the prisoner is placed, to visit such prisoner at stated periods, and to submit a report to government regarding his health and treatment. Reg. III. 1818, sect. 4, cl. 2.

government is to instruct some officer to visit him, and to make reports.

3019. The officer, in whose custody any state prisoner is placed, is to forward, with such observations as appear necessary, every representation which such state prisoner may from time to time be desirous of submitting to the governor general in council. Reg. III. 1818, sect. 5.

Representations of such prisoner to be forwarded.

3020. Every officer, in whose custody any state prisoner is placed, is to report to the governor general in council, as soon after taking such prisoner into his custody as is practicable, whether the degree of confinement to which he is subjected appears liable to injure his health; and whether the allowance fixed for his support is adequate to the supply of his own wants and those of his family, according to their rank in life. Reg. III. 1818, sect. 6.

Early report to be made of the health, and sufficiency of the allowances of such prisoner.

3021. Every officer in whose custody any state prisoner is placed is to take care, that the allowance fixed for the support of such prisoner is duly appropriated to that object. Reg. III. 1818, sect. 7.

The allowance of such prisoner to be duly appropriated.

SECTION XVII.

OF NATIVE INSANE HOSPITALS.

3022. The immediate charge of these establishments, at Dacca, Moorshedabad, Patna, Benares, Bareilly, and Delhi, are placed, as far as regards the medical and moral management of the patients, under the surgeons respectively of those cities; and that of the suburbs of Calcutta under the surgeon attached to the 24-pergunnahs. I. II. Rules, No. 1.(a)

Medical and moral management vested in surgeon;

3023. The superintendence of each hospital as to its general condition and management, and to the care bestowed upon the patients, is vested in the magistrate of the station. It is his especial duty frequently to visit the hospital lying within his jurisdiction. During these visits he is to observe particularly upon the state of the hospital, as to the due ventilation, cleanliness, and general good condition of its wards, and to the easy, contented and comfortable circumstances of the patients. He is likewise to listen attentively to any complaints, which the patients wish to make on the subject of their detention; on their general treatment, or on any supposed inattention or ill usage on the part of the medical officer, or those in authority under him;—and when any grievances or mismanagement seem to exist, he is immediately to take measures, in communication with the surgeon, for their redress; and is at all times to offer such hints for the direction and guidance of the latter as may seem requisite. I. H. Rules, No. 2.

and general superintendence in magistrate.

Magistrate to visit frequently;

to listen to complaints of patients and to endeavour to redress them;

3024. Once a quarter the magistrates are to report to the session judge upon the condition of the hospitals under their control, and on the state of the patients as to medical treatment and general comfort. They are to include in their report such observations as

to make quarterly reports to the session judge,

(a) These insane hospital rules were circulated by the nizamat adawlut with C. O. No. 69, of vol. 8.

they have to offer on the conduct of the surgeons in charge, in so far as relates to their sedulous discharge of the daily duties of the hospitals, and to the care, humanity, and success with which they appear to treat the unfortunate persons entrusted to their management. It is also the duty of the magistrates to bring to the notice of government through the session judge any instances of neglect or misconduct on the part of medical officers, or of marked disregard of the directions they have deemed it necessary to give on points connected with the internal regulation of the hospitals, or the management of their patients.

I. II. Rules, No. 3.

and to notice any instances of misconduct on the part of the medical officer.

Duty of session judge.

3025. The hospital is to be frequently visited by the session judge, who is to consider himself empowered to visit the various wards, to enquire minutely into the situation and particular cases of the patients, and to suggest to the magistrate such alterations as may appear advisable, in order to the better regulation of the establishment. He is likewise, whilst making his periodical reports to the government, to take occasion to remark on the state of the hospital inspected by him, and on its degree of fitness for the purposes for which it is intended. I. H. Rules, No. 4; and C. O. No. 279 of vol. 1.

Any difference of opinion between the magistrate and surgeon to be referred to the session judge.

3026. Should any difference of opinion arise between the magistrate and surgeon on points relating to the general management of the hospital, or to the treatment of any individual patient, the question is to be referred to the session judge; whose duty it is to interpose with his advice and authority, and, where the merits of the case would seem to require it, to submit the circumstance for the orders of government. I. H. Rules, No. 5.

Duties of superintending surgeons:

3027. Superintending surgeons are, during every return of their regular tours of duty, to inspect the hospitals lying within the limits of their superintendence; and at least once every month, when the hospital happens to be situated at the head-quarters of their division: during these visits they are to inspect minutely the condition of the buildings, carefully examine the registers and diaries, and make particular enquiry into the state of each patient. They are to consider themselves bound to look attentively to the conduct of the surgeon, to control his general practice, and in particular cases to modify it in such manner as may be likely to prove beneficial to the patient. In reviewing the state of each hospital in respect of the general management and professional treatment of its inmates, it is their particular duty to see that due attention is paid to the separation, and if practicable, the total disjunction of the male and female branches of the establishment, and to the classification and assimilation of the patients. They are to take care that frequent recourse is had to the cold and hot bath; that unnecessary coercion is never used; that irons are not employed except in extreme cases, and then only manacles or light leg chains; and that, where a preference is given to the strait waistcoat, it is used with discretion, and is neither tied so tight nor kept on so long as to impede respiration, fret and chafe the patient, or prevent him from feeding himself or attending to personal cleanliness. I. II. Rules No. 6.

to see that the male and female patients are separated; that frequent recourse is had to baths; and that patients are not placed under undue restraint;

to attend particularly to the diet and clothing of patients; to the cleanliness of the hospital; and the

3028. The diet and clothing of the patients are to form principal objects of attention to the superintending surgeons, who will not fail to convey their animadversion to the surgeons, and through them to the magistrates, when it appears to them that the supplies in these branches are conducted with unnecessary and lavish expenditure on the one

hand or undue and injudicious parsimony on the other. They are to observe that the hospitals are kept clean and comfortable; the wards pure and well ventilated; and the drains and necessaries frequently cleared out and washed; that the keepers and other servants are humane and attentive; and that in the general management and economy of the establishment nothing is wanting to that measure of comfort and happiness which is compatible with the deplorable state of the helpless beings composing it. I. H. Rules, No. 7.

behaviour of the keepers.

3029. The surgeon is regularly to visit the hospital in the morning and evening of each day; and, besides these stated periods, is to give his attendance at all other hours, in which it would seem to be required by any peculiarities in the cases of individual patients; during which visits he is to inspect every division and ward of the hospital, make himself acquainted with the state of all the patients, and issue such directions as may, under the circumstances of the moment, prove necessary. I. II. Rules, No. 14.

The surgeon to visit the hospital morning and evening; and to inspect the wards.

3030. On the 1st of each month, the surgeon is to transmit to the magistrate a return of the patients in the hospital drawn up agreeably to the annexed form. Reports of the same description, but specifying the variety of disease under which each patient labors, are likewise to be forwarded by the surgeon, in the beginning of every month, to the superintending surgeon of the division, for the information of the medical board:—

Surgeons to furnish a monthly return.

Monthly report of the patients in the Insane Hospital at . for the month of .

Names.	Age.	Occupation.	Admitted.	Discharged.	Died.	Remarks.

A. B.

Surgeon in charge.

Abstract of patients in the Insane Hospital for the month of .

	Remaining.	Admitted.	Total.	Discharged.	Died.	Remaining.	Remarks.
Males, ..							
Females, ..							
Total, ..							

A. B.

Surgeon in charge.

I. H. Rules, No. 13.

3031. A regular hospital register and medical diary are to be constantly kept by the surgeon, in which he is to enter the name, sex, age, temperament, general constitution, and habits of each patient; the history, kind, and duration of his disease; its treatment and progressive condition: together with dates of admission, discharge, and death. In this journal the peculiar nature and course of the malady of each patient, and its exacerbations and remissions, are to be accurately described, and his general treatment both as to discipline and

Hospital registers and medical diaries to be kept up; and to be open to inspection by the magistrate, judge, and superintending surgeon.

medicine fully detailed. Remarks are also from time to time to be entered on the change produced by any modification in the management, or change in the medicines, employed in the several cases. Such alterations as may occur in the bodily health of the patients should likewise be noted; and where the latter suffers much under acute disorder, a daily report of its progressive changes should be entered. These journals are at all times to be kept open for the examination of the magistrate, the session judge, and the superintending surgeon. I. II. Rules, No. 15.

Diet, clothing, &c. how to be supplied.

3032. The diet, clothing, bedding, cots, cooking and water utensils, and other necessaries, excepting wine and European medicines, required for the patients, are to be supplied by native contractors or sircars appointed by, and in every thing subject to, the authority of the magistrates. I. II. Rules, No. 16.

Clothing, bedding, &c. to be of what description.

3033. The articles of clothing, bedding, &c., used in the hospitals are, as far as possible, to be of the like sort and description, for the male and female patients, as those generally employed by individuals of the same classes and rank under the ordinary circumstances of common life. A sufficient stock of every article is at all times to be kept on hand to allow of frequent change and washing, and to admit of such occasional variations as alterations in the weather, or in the health of patients, may, in the opinion of the surgeon, seem to require. I. II. Rules, No. 17.

When fresh supplies of clothing, bedding, cots, &c. are required, how to be obtained.

3034. When fresh supplies of clothing, bedding, cots, charpoys, or other necessaries, are needed, an indent stating the number and description of each article is to be prepared by the surgeon and submitted to the magistrate, who, on approval, will sanction it and give orders for its being complied with. Upon the articles being delivered to the hospital, a receipt signed by the surgeon is to be granted to the person immediately employed in furnishing them. I. H. Rules, No. 18.

Diet how to be provided.

3035. The diet of the patients is to be provided in the same manner; and a list specifying the several articles and respective quantities of food required is to be daily made under the inspection of the surgeon, and given to the native purveyor who is to furnish them accordingly. I. II. Rules, No. 19.

Quality and quantity of food left to the discretion of surgeon.

3036. As it does not seem practicable to lay down any precise rules regarding kinds or qualities of food, which it may be proper to administer to the patients under all possible varieties of circumstances, the regulations of this department must in a great measure be left to the judgment and discretion of the medical officers in charge. It is, however, to be generally understood, that the articles chiefly expended should as nearly as possible approximate to the best sorts of those commonly used by persons of the same classes in health; and that in all such cases proper and humane indulgence should be shown to the peculiar habits and prejudices of individual patients. On occasion of bodily indisposition, the surgeon is always at liberty to vary the diet, and to order such extra articles as are requisite under the particular exigencies of each case. I. H. Rules, No. 20.

Surgeon to sign vouchers for articles received.

3037. At the end of every month a general list of all the articles of diet, clothing, bedding, &c. received during the month from the purveyor is to be made out, under the inspection of the surgeon, and signed and given in by him to the magistrate, who is to preserve

it as a voucher, by which the contractor's accounts of daily expenditure may, when presented for payment, be duly checked and authenticated. I. H. Rules, No. 21.

3038. The small quantities of wine, with which it may be considered necessary to supply the patients in cases of disease and debility, are to be Madeira of the description commonly used in the European hospitals under this presidency, and are in like manner to be furnished by the commissariat department upon indents presented by the surgeon, and bearing the counter-signature of the magistrate and superintending surgeon. The quantities used for each patient, and the reasons for administering it, are to be regularly entered in the hospital diary, and a statement of the total expenditure forwarded once every half year to the superintending surgeon. I. H. Rules, No. 22.

Supply of wine.

3039. The European medicines and apothecaries' utensils are to be supplied from the H. C. dispensary and dépôts upon indents prepared by the surgeon, according to the customary form, and submitted through the usual channel for the approval of the superintending surgeon or medical board. In the rare instance in which surgical aid becomes necessary, the surgeon is to consider himself at liberty to employ the instruments furnished to him for the general medical duties of the station to which he is attached. I. H. Rules, No. 23.

European medicines and apothecaries' utensils.

3040. The hospitals are to be lighted up at night; and their cells, wards, areas, grounds, and walks kept clean, under the direction and superintendence of the surgeon, whose peculiar duty it is to see that in these, and in all other points connected with the purity, airiness, and neatness of the buildings, the utmost attention is paid to secure the comfort and welfare of the patients. The floors of the wards and verandahs are to be duly swept, washed, and scoured. The walls of each hospital and its various compartments are to undergo a thorough white-washing at least twice a year; and the doors, windows, and other wooden work are to be painted as often as occasion may require. I. H. Rules, Nos. 24 and 25.

Hospitals to be lighted up at night; and their wards, &c. to be kept clean; and the walls to be white-washed half-yearly.

3041. Long experience in the history and treatment of insanity having shown, that much may be effected towards the recovery of those afflicted by the healthful employment and exercise of the mind, and the careful banishment of its habitual vicious trains of thought, it is expected that the surgeons of these establishments will devote much of their attention to this important branch of curative means; and that, by indulging the unhappy objects placed under their care with innocent games and other harmless means of recreation, they will endeavour to gain their confidence, and to reclaim them to the enjoyment and exercise of reason. The means best fitted for the useful occupation and amusement of the patients as adapted to native habits must be almost entirely left to the good sense and discrimination of the medical officer, who is to consider himself entitled to make such disbursements on this account as may appear necessary and proper. These disbursements are to be made through the medium of the purveyor, and carried to account in the general contingent bill. I. H. Rules, No. 26.

Patients to be indulged with innocent amusements; and surgeon may make the necessary disbursements on this account.

3042. Individuals are to be admitted patients into the insane hospitals upon the recommendation of the magistrate of the station, or of the session judge; and, without an order transmitted from either of those authorities, the medical officers in charge are in no case to receive or confine a person supposed to labor under mental derangement. In the event of a person being sent from any of the neighbouring zillahs, under circumstances justifying his detention,

Rule for admission of patients.

the magistrate or senior civil servant on the spot is to forward with him a certificate of supposed insanity, which, when countersigned by the magistrate of the station, will be the surgeon's warrant for receiving or confining him. Magistrates are also to forward a descriptive roll in duplicate in the annexed form, with the column of remarks filled up by the surgeon of the district in those cases in which the patient has been attended by him :—

Descriptive roll of insanes forwarded to the Insane Hospital of from Zillah .

1.	2.	3.	4.	5.	6.	7.	8.
Name of patient.	Names of near relatives or members of his family.	Place of residence, including names of village, pergunnah, and zillah.	Caste, occupation, or trade.	Age.	List of articles as cloths, &c. belonging to the patient and sent with him to the asylum.	Circumstances that led to the patient having been put under restraint and sent for confinement in the asylum.	Remarks. A brief history of the case, the supposed cause of insanity, &c.

* Column 3.

Column 4.

Place of residence, profession, and age.

List of patient's property sent with him to asylum as well as of any sold to meet charges, with amount realized by such sale.

In the case of Insane European British subjects, sent under Circular Order, No. 85, dated 30th April 1841, columns 3, 4, 5, and 6 may be compressed into two columns, as shewn in the margin.*

I. H. Rules, No. 10; and C. O. Nos. 82 of vol. 2, and 104 of vol. 3.

Particulars to be furnished when lunatics, not prisoners, are sent to the hospital.

3043. Whenever magistrates have occasion to send a lunatic patient (not being a criminal prisoner) to the medical officer in charge of a lunatic asylum, they should be careful to forward at the same time a descriptive statement in the accompanying form, indicating all such material particulars regarding the patient as may be ascertainable :—

Name.	Caste.	Residence.	Name and residence of father.	Time and place of being taken into custody.		Circumstances under which the lunatic was seized, and is sent to the asylum, with any facts known regarding his previous state of mind and mode of life.
				Date.	Place.	

C. O. Govt. W. P. No. 618, March 13, 1854.

Rule for discharge of patients.

3044. The surgeon is to consider himself at liberty to discharge patients from the hospital, without reference to the magistrate, only in cases in which he has reason to believe the cure to have been perfectly established, and of the peculiarities of which he has had sufficient

experience to warrant the opinion that a sudden or dangerous relapse is not to be dreaded. In cases of convalescence or of quiet or harmless disease, and generally in those in which, although the recovery is imperfect, the patient may seemingly be set at large without danger to society, the surgeon may, when he sees meet, represent the circumstance to the magistrate, who is to grant a discharge upon receiving due security from the relatives or friends of the insane person for his future peaceable behaviour. (a) I. H. Rules, No. 11.

3045. The magistrate is under no circumstances to consider himself entitled to release a patient without having previously obtained the surgeon's opinion upon the safety of so doing; should any difference of opinion arise between them on questions of this nature they are to refer the point, when practicable, to the superintending surgeon, whose judgment and decision is, unless either party think it right to have recourse to reference to the medical board, to be considered final as to the immediate discharge or further detention of the individual. I. H. Rules, No. 12.

Magistrate never to discharge without the consent of the surgeon.

3046. Attached to every hospital there is to be, upon the monthly salary of sixteen rupees, a native doctor or compounder, who is constantly to reside on the spot and to be immediately subject to the orders of the surgeon. At the head of each establishment is to be a darogah or head native keeper on a monthly salary of ten rupees, who, under the control and direction of the medical officers, is to have the general management of the patients, and to possess authority over the other servants. In the male branch of the hospital there is to be for every thirty patients one naib jemadar or deputy keeper on a salary of five rupees; and for every eight patients a peon, coolie, or nigaban at four rupees; there is to be one mehter on wages of three or four rupees for every twenty patients; and one nai, or barber, at three rupees for every fifty patients. For the women's department there is to be a head female keeper at six rupees per month, one female coolie at four rupees for every eight patients, and one meltrannee for every twenty patients. There are also to be common to both branches of the establishment, a cook at five rupees wages for every forty patients; a bheesty at four rupees for every forty patients; one goala or Hindoo water-carrier at four rupees for carrying water to the cookroom for the use of the Hindoos; and one dhobie at five rupees for every fifty patients; one hurkara at four rupees is to be allowed for carrying messages; and, when the airing grounds are extensive, one or even two gardeners at four rupees each per month. It is conceived, that the foregoing establishment for servants is calculated upon a scale sufficiently liberal to provide, under ordinary circumstances, for the safe custody of the patients and due attendance on their persons; but the magistrate is at liberty, in communication with the surgeon, to augment or diminish it, or to vary its distribution, when such change appears necessary for the benefit of the patients. I. H. Rules, No. 27.

Establishment of servants allowed.

Magistrate in communication with surgeon may augment or diminish it.

3047. The salaries of the native establishment of each hospital are to be fixed by the magistrate; and the whole of the servants of every description maintained in it, are to be mus-

Payment and control of native servants.

(a) This rule of course does not apply to the case of persons, who, being charged with the commission of a penal act, have been sent to the insane hospital on proof of insanity, either when apprehended, or at the time of trial; for in such case the accused is to be tried upon his recovery. See *paras.* 100 *et seq.*

Treatment of patients by servants.

tered for inspection at such times as he may choose to direct. Every description of servants attached to the hospital are placed under the control and orders of the medical officers ; and, without instructions from them, are in no case to have recourse to irons, the strait waistcoat, or other severe restraints. It is the surgeon's duty to be careful that the patients are never struck ; that the keepers invariably abstain from all acts of oppression, and unnecessary severity, and under every circumstance behave with mildness, forbearance, and humanity. In instances of gross misconduct, the surgeon is empowered immediately to discharge the offender ; but in ordinary cases he is to represent the circumstances to the magistrate, and obtain his consent, previously to making any change in the state of the establishment. I. H. Rules, No. 28.

Rule for discharge of servants.

Expenses of hospitals how to be charged.

3048. The expenses attending the support of each of the insane hospitals, including the monthly allowances granted to the surgeon, and to the native officers on the establishment, are to be charged in separate monthly contingent bills, to be submitted in the customary manner by the magistrate for audit and for the sanction of government. An annual account of the total charge for each establishment is likewise to be furnished by the magistrate for the information of government ; and all expenses of every description incurred on account of these hospitals are to be charged under the head of charges general in the general department. I. H. Rules, No. 29.

Annual statements to be furnished by the magistrate to government.

3049. The following returns are to be furnished annually to government by the magistrate, viz. a table of the total expenditure in the insane hospital, showing also the ordinary daily allowance for each patient ; a return of the servants attached to the institution ; and a statement of the miscellaneous contingencies incurred.(a)

Nominal Return of servants attached to the Institution.

Number.	Names.	Description.	Rate of pay per mensem.			Amount per annum.		
			Rs.	As.	P.	Rs.	As.	P.

Account of miscellaneous contingencies during the year 185 .

Articles.

Amount.

Rs. | As. | P.

(a) I cannot find the order under which these returns are furnished ; but have taken the forms from those actually in use.

Table showing in detail the expenditure in the Insane Hospital under the Presidency of Fort William for the year 185 .

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.
Station.	Daily average number of patients.	Total number of patients dieted per annum.	Total expense for diet per annum.	Total expense for clothing per annum.	Total expense for servants per annum.	Total expense for rent and repair of hospital.	Total miscellaneous expenses as per detailed account.	Grand total of expense per annum.	Expense of diet per man per mensem.	Expense of clothing of servants per man per mensem.	Expense of servants per man per mensem.	Total expense of each patient per mensem.	Expense of half caste patients.

Daily ordinary allowance for each patient.

[illegible]

A D I G E S T.
OF THE
C R I M I N A L L A W
OF THE
PRESIDENCY OF PORT WILLIAM
AND
G U I D E
TO ALL
CRIMINAL AUTHORITIES THEREIN.

SECOND EDITION.

P A R T II.

COMPILED BY
F. L. BEAUFORT,
BENGAL CIVIL SERVICE.

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BOOK III.

OF THE MISCELLANEOUS DUTIES OF THE MAGISTRATE.

CHAPTER I.

OF FERRIES AND TOLLS.

SECTION I.

OF FERRIES, AND FERRY FUNDS.

3050. The immediate superintendence of the public ferries is vested in the magistrates; and the collectors of revenue are to refrain from exercising any interference with them. Reg. VI. 1819, sect. 2, cl. 2.

Immediate superintendence vested in magistrates,

3051. The acts of the magistrate in the *management* of ferries are subject to the control of the superintendent of police; and all appeals from orders in such matters are to be received and disposed of exclusively by that authority. C. O. No. 29 of vol. 3. Const. No. 1114.

subject to the control of the superintendent of police.

3052. No ferries are to be considered public ferries, except such as are situated at or near the sudder stations of the several magistrates, or such as intersect the chief military routes, or other much frequented roads, or such as from special considerations it appears advisable to place under the more immediate management of the magistrate. Reg. VI. 1819, sect. 3, cl. 1.

What ferries are to be considered public ferries.

3053. The government reserves to itself the power of determining from time to time what ferries are, under the preceding rule, to be deemed public ferries, and as such are to be subject to the immediate control of the magistrates; and no magistrate is, without previous authority from government, to assume the management of any ferry which has not been previously subjected to assessment. Reg. VI. 1819, sect. 3, cl. 2.

The magistrate is not to assume charge of any ferry, as coming within the above rule, without the sanction of government.

3054. Magistrates are to report, through the superintendents of police, for the information and orders of government, when in their judgment ferries should, under the foregoing rules, be considered to be public ferries. Reg. VI. 1819, sect. 3, cl. 3.

but is to report to government

3055. The power of appointing proper persons to the charge of the public ferries is vested in the magistrates, who are authorized, from time to time, to issue such orders as they judge expedient for limiting the rates of toll to be levied at each ferry, for regulating the number and description of boats to be maintained, for preventing exactions, and generally for promoting the efficiency of the police, and the safety and convenience of the community. Reg. VI. 1819, sect. 4, cl. 1.

Magistrate to appoint proper persons to the charge of the public ferries; and to regulate the tolls, boats, &c.

Magistrate to remove such persons on proof of misconduct.

3056. On proof of any wilful breach of these rules, or of other misconduct on the part of the manjees or other persons in charge of the public ferries, the magistrates are empowered (independently of any punishment to which the parties subject themselves under the general regulations) to remove such individuals, and to appoint others in their room. Reg. VI. 1819, sect. 4, cl. 2.

What persons are exempted from the payment of tolls at public ferries ;

3057. The manjees, or other persons who are vested with the charge of public ferries, are to engage to cross free of toll the troops of government with their baggage and military stores, as well as all police and other native officers of government, who are actually employed in the public service. Reg. VI. 1819, sect. 4, cl. 3.

and at all ferries,

3058. All officers of government are exempted from the payment of ferry tolls within the division to which they belong, when they are moving in those divisions on the public service ; and any officer not entitled to exemption under this definition of the rule, who prefers a claim to exemption based on the principle which the rule is intended to establish, is to refer his claim, for special consideration and orders, to the department to which he belongs. C. O. No. 208 of vol. 3. *L. P.* C. O. Sup. Pol. *L. P.* No. 9 of 1845.

Lists of ferries to be constantly exhibited,

3059. A list of all public ferries, bearing the signature of the magistrate, is to be constantly stuck up in some conspicuous place in his cutcherry, and in that of the collector of the district, and likewise in the thana within the jurisdiction of which they are situated. Reg. VI. 1819, sect. 5.

Private boats not to ply for hire in the vicinity of public ferries ; but attention to be paid to claims for compensation

3060. Such ferries exclusively belong to government ; and no person is to be allowed to employ a ferry boat plying for hire at or in their immediate vicinity, without the previous sanction of the magistrate :—provided however, that due attention is to be paid to all claims for compensation which are preferred by individuals for any loss sustained by them, in consequence of the extension of the authority of government to ferries hitherto under their private management, and which have not been heretofore let in farm, or held khas, or otherwise deemed subject to assessment on account of government. Reg. VI. 1819, sect. 6, cl. 1.

Plying private boats in the vicinity of public ferries is a misdemeanor.

3061. A contravention of the above rule, by parties contrary to order plying their boats in the vicinity of a government ferry, is a misdemeanor punishable by the magistrate under the general powers vested in him by the provisions of sect. 19, Reg. IX. 1807. Const. No. 1305.

Claims for compensation to be reported to government.

3062. Claims of the above nature are to be inquired into by the magistrate, and his opinion on the merits of each case is to be reported, through the channel of the superintendent of police, for the consideration and orders of government. Reg. VI. 1819, sect. 6, cl. 2.

General objects to which the magistrate is to attend in assuming charge of public ferries.

3063. In assuming the management of public ferries, the general objects of the magistrates are to be, the maintenance of an efficient police, the safety and convenience of travellers, the facility of commercial intercourse, and the expeditious transport of troops. For the above objects they are to be careful to provide or cause to be provided safe and commodious boats ; they are to fix the rates of toll on a very moderate scale, in no case

exceeding, without an indispensable necessity, the rates which prevailed previous to the enactment of Reg. XIX. 1816(*a*); they are to adjust the modes of payment so that the tolls may bear as lightly as possible on the poorer classes of the community; and by leaving a fair profit to the individual, who is chosen for the immediate charge of the ferries, they are to endeavour to secure as far as possible the services of respectable and competent persons. Reg. VI. 1819, sect. 7, cl. 1.

3064. No collections are to be taken on account of government from the proceeds of any ferry, until the above objects are fully secured; and if in any case there remains a clear surplus profit, after providing adequately for those purposes, the amount collected is to be applied solely to the furtherance of similar objects, such as the repair or construction of roads, bridges, and drains, the erection of sarais, or other works of a like nature. Reg. VI. 1819, sect. 7, cl. 2.

The above objects to be first attained, and surplus collections how to be disposed of afterwards.

3065. In cases of the latter description, viz. those in which the receipts of any ferry are sufficient to afford a surplus revenue as above mentioned, the magistrate, having previously received special authority from government in that behalf, may and is to require the persons holding or applying for the charge of the ferry, to enter into engagements for the payment, by monthly or quarterly instalments, of such a sum of money as with reference to the estimated surplus appears justly demandable without risking the primary objects above indicated; and if any person in charge of the ferry refuses to enter into an engagement as aforesaid, and does not assign sufficient cause for such refusal to the satisfaction of the magistrate, it is competent to such officer to transfer the charge of the ferry to any other respectable and competent person:—provided however that no person in charge of a ferry, who otherwise conducts himself to the magistrate's satisfaction, is to be removed from his charge under the above rule excepting at the expiration of the Bengal or Fussily year, according to the era current in the province. Reg. VI. 1819, sect. 7, cl. 3.

Rule of proceeding when ferries yield a surplus revenue.

3066. The mode in which collections made under this section are to be paid, whether into the treasury of the magistrate or collector, or any other public officer, is to be determined by the orders of government, and adjusted with the party by the magistrate at the time of giving him charge of the ferry or ferries entrusted to him:—provided, however, that as a general rule all persons in charge of ferries subject to the payment of a rent are, on discharging any instalments, to receive and to be directed to require receipts for the amount, which are to be countersigned by a European officer of government. Reg. VI. 1819, sect. 7, cl. 4.

Mode in which collections are to be paid, to be regulated by government.

3067. A person holding the farm of a public ferry is not authorized to underlet it without the sanction of the magistrate(*b*). A summary suit by such farmer against his katkinadar would not be cognizable by the collector under Reg. VIII. 1831*, the mode of proceeding being expressly provided, in such cases, by the above rules. Const. No. 713.

Farmers of public ferries cannot underlet them.

* i. e. by a summary suit before the collector.

(*a*) The regulation by which the management of ferries was first entrusted to officers of government.

(*b*) It was observed by the Western court, that "the regulation cited (Reg. VI. 1819) does not appear to contemplate the underletting of public ferries either with or without the magistrate's sanction."

Security from persons in charge of public ferries.

3068. The magistrate is competent to take security for the good behaviour of persons vested with the charge of public ferries; and in the case of persons who, under the provisions of the foregoing section, enter into an engagement for the payment of a yearly rent, it is likewise competent to him to require adequate security for the punctual payment of the amount, as it becomes due. Reg. VI. 1819, sect. 8.

Pottahs and kaboolyuts need not be on stamp paper.

3069. Leases and counterparts granted to and taken from the farmers of ferries need not be written on stamp paper, as they come within the exemption in schedule A, Reg. X. 1829, of conveyances in which government is a party. Const. No. 1111.

Persons in charge of public ferries may always relinquish them on giving ten days' notice

3070. Any person in charge of a public ferry, whether subject to the payment of rent or not, is at liberty to relinquish the charge on giving 10 days' notice to the magistrate, and on paying any arrears that are due:—provided, however, that it is in such case competent to the magistrate to require any person who so relinquishes the charge of a ferry, or who is removed from such charge, to transfer the boats belonging to the ferry to the persons, who are appointed to succeed him, at a fair valuation, or to retain the boats until others can be provided, making a suitable compensation to the owner. Reg. VI. 1819, sect. 9.

Arrears how to be recovered from defaulters.

3071. If any person having charge of a ferry, subjected to the payment of a yearly rent, fails to discharge the amount as it becomes due, he is liable to immediate removal; and the magistrate, after ascertaining the arrear and certifying the default, is to proceed to the recovery of the amount from the party, and his surety, in the manner prescribed by sect. 7. Reg. XVIII. 1817* for the recovery of public money embezzled by native officers, giving at the same time a liberal consideration to any pleas, which the party urges in explanation of the default. Reg. VI. 1819, sect. 10.

* i. paras 2549 et seq.

In such cases the appeal does not lie to the session judge

3072. It is not competent to a session judge to receive an appeal from the orders of a magistrate for the realization of ferry balances. C. O. No. 39 of vol. 3.

Magistrate is always to reserve to himself the power of reducing tolls, or extending exemptions.

3073. All persons vested with the charge of public ferries, whether paying any rent or not, are, on accepting the situation, to be distinctly apprized, that the magistrate reserves to himself the power of reducing the rates of toll, or extending the exemptions from the payment of it, at such times and in such manner as appears proper with a view to the public good:—provided, however, that in the event of any such measures being adopted, the party in charge of the ferry may relinquish the charge; and the magistrate is in such case to purchase from him at a fair valuation, or to cause his successor so to purchase, all boats belonging to the ferry with all articles thereunto appertaining. Reg. VI. 1819, sect. 11.

In such case magistrate to state whether he intends to reduce the rent.

3074. Provided also that whenever a magistrate adopts such measures in regard to any ferry for which a rent has been required from the person vested with the charge of it, he is, in communicating his orders to the party aforesaid, at the same time to apprise him, whether he designs to allow any, and what, reduction in the stipulated rent. Reg. VI. 1819, sect. 12, cl. 1.

Rule in such cases, if the person in charge is

3075. If the person in charge of the ferry is not willing or able to pay the rent so fixed by the magistrate, he is nevertheless immediately to carry the magistrate's order into

effect, and is to state in his reply to those orders the amount of rent which he is willing to continue to discharge. Should the offer of the party in charge of the ferry appear inadequate, it is competent to the magistrate to remove him and to place another person in charge of the ferry, purchasing the boats and their appurtenances as aforesaid; but the person so removed is to be required to pay for the days during which he retains charge, subsequently to the date of his reply to the magistrate's order, a proportionate rent calculated at such rate only as he has tendered. Reg. VI. 1819, sect. 12, cl. 2.

desirous to relinquish it.

3076. The foregoing rules are intended to apply exclusively to those ferries, which are declared to be public ferries; with regard to all other ferries, the magistrates are not to interfere with them, further than is necessary for the general maintenance of the police, and for the safety of passengers and property. Reg. VI. 1819, sect. 13, cl. 1.

Ferries not made public under the above rules.

3077. Provided however that if any person is drowned or exposed to imminent danger, or if any property is lost or damaged, by the oversetting or sinking of a ferry boat, and it is established, on inquiry before the magistrate, that the boat was overloaded with passengers or property, or was insufficiently manned, or was out of repair at the time of the accident,—the manjee of the ghat or boat, if duly convicted of permitting his boat to be overloaded, or to be insufficiently manned, or out of repair, is liable to such punishment, as the magistrate thinks proper to impose not exceeding imprisonment for 6 months, or a fine of 200 rupees. Reg. VI. 1819, sect. 13, cl. 2.

Penalty for accidents to life or property in consequence of the neglect of the manjees.

3078. An annual statement made up to the 1st of January of each year is to be forwarded by the several magistrates to the superintendents of police, exhibiting the number of public ferries in each district, the amount of the net assessment realized from such of them as are subject to assessment, and the purposes to which the amount so realized has been appropriated under cl. 2, sect. 7 of this Regulation. In submitting to government the results of those statements, the superintendents of police are to offer any suggestions which appear to them calculated to facilitate or to improve the practical operation of the system. Reg. VI. 1819, sect. 14.

Annual statement of ferries, and surplus proceeds.

3079. The following rules have been enacted by the government of Bengal for the appropriation of the surplus ferry collection: *Rule 1.* Committees shall be formed in each district for the management of the surplus ferry funds collected under Reg. VI. 1819, and applicable under cl. 2, sect. 7 of that enactment for the promotion of the convenience and safety of travellers, and the facility of commercial intercourse. *Rule 2.* Each district committee shall consist of not more than nine persons. The magistrate of the district and the executive officer of the division are to be ex-officio members of the committee. The remainder shall in the first instance be appointed by government upon the recommendation of the commissioner, and shall consist as well of persons out of the service, natives and Europeans, as of those who are connected with it. Future vacancies to be filled up by the commissioner, subject to the approbation of government. *Rule 3.* The commissioner shall be a member of the local committees, and preside at the meetings whenever he is present. He shall also have a casting vote, whether absent or present, when opinions are divided. *Rule 4.* The magistrate will from time to time convene meetings of the committee for the

Ferry Fund Committees L. P.

Objects of appointment.

Formation of committee, and nomination of members.

Superintendent of police to preside, and to have the casting vote.

Meetings how to be convened.

Authority required for the transaction of business.

Unions.

Annual apportionment of surplus funds.

Book of minutes.

Funds to be applied at the discretion of the committee.

Funds not to be expended on the station.

Executive establishments.

Retrospective limit of those rules.

Memo. of funds in hand to be forwarded with applications for sanction to outlays.

Instructions for the expenditure of the annual assignment of funds in 1856-57.

transaction of business, giving due notice to the members. *Rule 5.* No meeting of the committee shall be held in the absence of the magistrate; but the magistrate and one other member, or the magistrate singly, may transact the business of the committee, if other members after due notice fail to attend. *Rule 6.* The magistrate may at his discretion undertake any business, which may be of such a nature as not to bear the delay of a reference to a meeting of the committee; he will on all such occasions report his proceedings at the next meeting. [*Rule 7* divided the country into unions, but for these the divisions of the commissioners were substituted by order of government *Bengal*, No. 912, April 22, 1854.] *Rule 9.* At the close of each official year, the accountant will ascertain what is the amount of surplus ferry funds in each union during the preceding year, and distribute the total equally amongst the several districts comprised in it; the government reserving to itself the power of making a different allotment of the funds, should such alteration hereafter appear expedient. *Rule 10.* Each committee will keep a book in which will be entered minutes of all its proceedings and resolutions. The proceedings of each meeting shall be attested by the members present. *Rule 11.* Each committee will apply the funds assigned to it to the completion of new, and the repair of old public works, in such manner as it may think fit, reporting at the close of each year the manner in which its funds have been applied, and stating the works to which its attention will be directed in the year ensuing. *Rule 13.* Provided that no part of the funds shall be expended on station roads or station improvements without the sanction of government. *Rule 14.* Each committee is authorized to entertain executive establishments for carrying on public works. *Rule 15.* These rules relate exclusively to surplus funds accruing after the 30th April 1840. No surplus, which may have accrued in any district before that date, can be expended without the express sanction of government. C. O. Sup. Pol. *L. P.* No. 2 of 1848.

3080. A memorandum of the funds at the credit of the committee is invariably to accompany applications to the commissioner for sanction to outlays on works, &c. contemplated by the committee. C. O. Sup. Pol. *L. P.* No. 8 of 1848.

3081. It is assumed that a sum of 5,000 rupees cannot, in ordinary cases, be safely and efficiently expended under a surveillance costing less than 1,200 rupees a year. It is expected that this scale will enable each committee to engage a competent professionally-trained person and establishment for their works. Each committee will therefore now understand that the sum set down is placed absolutely at its disposal for the entertainment of an establishment. This sum is not to be all frittered away on mere office clerks, nor on the salary of a secretary, unless the secretary is personally able to prepare plans and drawings and estimates of works, and to undertake the personal superintendence of the works. As a general rule the magistrate of the district should be ex-officio secretary, and of course will receive no salary. If any committee thinks that a less sum is required, or if by combining with any adjacent committees they can thereby diminish the expenditure for establishment and superintendence, they are authorized to lay out the difference on public works: but if they consider a larger sum necessary on this head, they must apply for the sanction of government. The sum now awarded to each committee is hereby placed at its absolute disposal, subject only to the control of the commissioner. Each committee

is at once authorized to undertake, without further reference to government all those plans and undertakings which meet with the approval of the commissioner. It is only in case of a difference of opinion between the commissioner and the committee that a reference to government for sanction will be needful. If the sum allotted is not sufficient to complete the work which any committee considers itself able to get through in the working season of 1856-57, the government will be prepared to consider the expediency of granting a further sum on application made; but no further grant will be made merely according to the estimates of works, the completion of which will not be effected within the present season. As the entire responsibility for the due expenditure of these funds is now made over to the commissioner and the committee, the Lieutenant Governor trusts that they will endeavour to make the best use of the resources at their disposal, so as to justify the confidence which has been reposed in them. The committee will not fail to take advantage of the power thus placed in their hands to encourage local subscriptions in aid of the works which they will now be able to undertake without uncertainty or delay. As a general rule the committees should be prepared to double the amount of any subscription tendered to them by any private individuals for useful public works. Each committee is required to submit, on the 30th April 1857, a tabular statement in the form No. 32 of appendix C, showing the manner in which its funds have been expended. Resolution Govt. *Bengal*, No. 1308, September 12, 1856.

3082. The annual allotment of funds to each district is to be based on the average amount of the collection in each revenue division. If the allotted funds of any one district are not spent, or appropriated, for the accomplishment of specific and approved objects within a year from the date of allotment, the commissioner may take the whole or any part of the unexpended or unappropriated balance at the credit of any particular district, and place it at the disposal of the ferry fund committee of any other district of the division, where it appears to be more wanted, or likely to be more beneficially applied; reporting the circumstance in each instance for the information of government. Order Govt. *Bengal*, No. 912, April 22, 1854.

Commissioner has power to transfer the unexpended funds.

3083. On submitting nominations, through the commissioner of circuit, for the appointment of gentlemen, as members of the committee, who are not in the public service, the committee are to report what position those gentlemen hold in the district, and why and by whom the nomination has been suggested. The government should be aided by a distinct expression of opinion by the commissioner. C. O. Govt. *Bengal*, No. 1014, April 26, 1854; No. 24, June 21, 1855.

Nomination of members of committee.

3084. The unexpended balances of each district at the close of the year are to be carried separately to the credit of each committee, instead of the whole balances of the districts forming one union being added to the funds of the year available for that union, and then divided amongst the districts comprising it. C. O. Sup. Pol. *L. P.* No. 17 of 1844.

Apportionment of balance remaining at the close of the year.

3085. The following "suggestions for the better management of the ferries by the help of the district committees" were circulated with the approbation of government. (I.) The magistrate is to place before the committee a statement of the number of the

Suggestions for management offered.

Statement to be

laid before the committee.

Individual members to superintend the ferries near to their residences.

Arrangements for ferries to be submitted to committee for approval.

Duration of leases of ferries.

Estimates of expenses to be submitted through the committee.

Expenses chargeable to the ferry fund.

Primary object of committees to make the ferries secure, and to provide accommodation thereat for travellers.

Annual report of works under the supervision of committees.

public ferries with the rents derived from each; and the members of the committee are to be requested to furnish him with information regarding other ferries, which under the provisions of Reg. VI. 1819 ought to be declared public. (II.) The members are to be requested to superintend the several ferries near to their residences, affording to the magistrate their aid in checking extortion on the part of the holders of the ferry, as well as in keeping up good boats and efficient crews, reporting to the magistrate either individually or through the committee any abuses which exist. (III.) The magistrate, before concluding arrangements for the ferries, is to place before the committee the offers made to him, the numbers of boats, and the strength of the crews to be kept up, and the rates of toll at each ferry, together with all other circumstances for their approval; after obtaining which he is to conclude the engagements and forward them to the office of the superintendent of police,—the members of the committee having of course the power to submit any objections through their secretary or the magistrate to the same authority. (IV.) The magistrate and the committee are particularly requested to take into consideration the advantages to be gained by leasing the ferries for longer periods than from year to year. If a reasonable rent is procured, such a measure will encourage the farmer or manager to lay out capital in procuring good boats, and give him a greater interest in his farm; and will have a tendency to prevent the extortion now practised for the sake of obtaining as much profit as possible within the year. The leases might be given for three years at the least. (V.) All estimates of expenses for boats, ghats, &c. are to be submitted to and approved by the committee, and sent through them to the superintendent of police for sanction. C. O. Sup. Pol. *L. P.* No. 11 of 1842.

3086. The expense of providing boats, rope-bridges, and other means of crossing the public mail over rivers and nullahs, is fairly chargeable to the ferry fund. The committees are therefore to take into consideration the lines of post road within their districts, and to adopt measures for the speedy and secure transit of the public mail over such obstacles as occur in the road. C. O. Sup. Pol. *J. P.* No. 18 of 1842.

3087. Before any part of the proceeds of the ferries is applied to other purposes, the ferries themselves should be made in all respects secure; boats suited to the local circumstances of the rivers, on which they are employed, should be provided and maintained in a state of efficiency; and convenient places built for travellers and merchants, who are often unavoidably delayed at them. For these purposes there should certainly be efficient protection afforded by proper police establishments on the spot paid out of the proceeds of the ferries; and, if possible, there should be made some safe and convenient place of resort of the nature of a sarai, especially at the large and more important ferries. The superintendent of police objects to the employment of single police officers at out-posts. Order Govt. *Bengal*, May 2, 1837. C. O. Sup. Pol. *L. P.* No. 18 of 1844.

3088. A report is to be furnished annually to the superintendent of police by the committee of the works in progress under their supervision, in the form No. 16 of appendix F. C. O. Sup. Pol. *L. P.* No. 2 of 1844, and No. 2 of 1846.

3089. The ferry fund committees cannot expect, in addition to the annual surplus funds, that the convicts should be placed at their disposal, which would be equal to a further large money assignment. C. O. Sup. Pol. *L. P.* No. 766, April 2, 1844.

The committees are not entitled to convict labor free of expense.

3090 The following rules are in force in the *Western* provinces. **Rule 1.** Committees are formed in each district for the management of the surplus ferry funds collected under Reg. VI. 1819, and applicable under cl. 2, sect. 7 of that enactment to the promotion of the conveniences and safety of travellers, and the facility of commercial intercourse. **Rule 2.** These committees are to consist of the magistrate and collector, the joint magistrate and deputy collector, the executive engineer, the civil surgeon, and any other number of persons whom they may associate with themselves, subject to the confirmation of the commissioner of the division, whose approval is necessary. When once so appointed, they are removable only by government. Three members constitute a quorum for the transaction of business. **Rule 3.** The commissioner of the division is a member of the local committee, and is to preside at the meetings whenever he is present. He has also a casting vote, whether absent or present, when opinions are divided. **Rule 4.** The country is divided into unions. The surplus ferry funds in these are thrown together, and are divided between the several districts which compose them. **Rule 5.** At the close of each official year the accountant is to ascertain what is the amount of surplus ferry funds in each union during the preceding year, and is to distribute the total equally among the several districts comprised in it; but the government reserves to itself the power of making a different allotment of the funds, if such alteration should appear expedient. **Rule 6.** Each committee is to keep a book, in which are to be entered minutes of all its proceedings and resolutions. The proceedings of such meetings are to be attested by the members who are present. Appointments of members of the committee must be entered on the proceedings. This book is always to be open to the inspection of any persons, who desire to peruse it. **Rule 7.** Any member of a committee has the power to demand a reference to the government, through the commissioner, on any point on which he may differ from the majority. **Rule 8.** The commissioner, on the recommendation of the committee, is competent to sanction establishments to the amount of 150 rupees per mensem, and estimates to the extent of 1000 rupees on any one work. Larger undertakings must be submitted to government. **Rule 9.** The disbursements are to be exhibited in the magistrate's accounts, and passed under the rules applicable to such cases. The magistrates are to pay on an order signed by three members of the committee and the authority of the commissioner. **Rule 10.** The same committee constituted as above are to administer the one-per-cent road fund, but without the restrictions on the disbursements contained in rule 8. **Rule 11.** Certain roads are exempted from the control of the committee. C. O. Govt. *W. P.* February 10, 1841; and No. 1053A, September 21, 1854.

Ferry Fund Committees
W. P.

Objects of committee.

Formation of committee and nomination of members.

Three constitute quorum.

Commissioner to preside and to have casting vote.

Unions.

Annual apportionment of funds.

Book of proceedings.

Member may refer to government.

Sanction to proposed expenditure.

Disbursements to be noted in magistrate's accounts.

One-per-cent road fund.

Rules for management of ferries.

Divided into three classes.

3091. Commissioners are to observe the following rules in the management of the public ferries. **Rule 1.** In all ferries which are now held kham they will have effect from the 1st of January 1851, and in all the ferries which are farmed, they will form the conditions on which the next farm will be granted. **Rule 2.** The rivers on which public ferries are established are divided into three classes as follows:—First class; the Ganges at and below Daranuggur Ghat, and the Gogra.—Second class; the Ganges above Daranuggur Ghat and the Jumna at

Tolls not to be levied from persons fording.

Rates and schedule of tolls.

Infraction of terms of lease.

and below Delhi; the Goomtee; the Raptée below Goruckpore; the Gunduk; the Tonse (between Mirzapore and Allahabad); and the Ramgunga below Bareilly.—Third class; all other streams than the above, being generally such as are fordable during half the year. *Rule 3.* Tolls shall be levied on all rivers thus classed from parties crossing in boats or over floating bridges. No tolls shall be demanded from persons fording the river. *Rule 4.* The tolls shall be levied at the rates specified in the annexed schedule A(a). The rates leviable according to this schedule at any particular ferry shall be written legibly in English, Oordoo, and Hindee, in the currency mentioned in the schedule, and also in the equivalent local currency wherever the calculation by pies may not be intelligible to the people; and shall be exposed to public view in some conspicuous place wherever tolls are demanded. The toll-keeper shall also have in his possession a copy of the schedule of rates clearly written on paper in English, Oordoo, and Hindee, which he will produce on demand by every passenger who is not on foot. *Rule 5.* Infraction of the terms of the lease will expose the contractor to annulment of the the lease, and to the imposition of a fine, leviable by suit in the civil court, not exceeding the

(a)

(A.)

Schedule of Tolls to be demanded on each Public Ferry in the North Western Provinces.

NAMES.	ON RIVERS, CLASS 1ST.		ON RIVERS, CLASS 2D.		On Rivers, Class 3rd.	Remarks.
	Boats from 15th October to 15th June.	Bridges during 12 months, or Boats from 16th June to 14th October.	Boats from 15th October to 15th June.	Bridges during 12 months, or Boats from 16th June to 14th October.		
Foot passenger laden, or unladen,	2 pie	3 pie	1 pie	2 pie	1 pie	
Camels unladen,	1 anna	1 anna	9 pie	1 anna	6 pie	
Ditto laden,	1½ anna	2 annas	1 anna	1½ anna	9 pie	
Cows, bullocks, buffaloes, unladen,	2 pie	3 pie	1½ pie	2 pie	1½ pie	
Ditto, ditto, ditto, laden,	4 pie	6 pie	3 pie	4 pie	3 pie	
Ditto, in droves of 50 and upwards per 100, unladen,	12 annas	1 rupee	10 annas	12 annas	8 annas	
Ditto, ditto, ditto, ditto, laden per 100,	1½ rupee	2 rupees	1½ rupee	1½ rupee	1 rupee	
Donkeys, laden or unladen,	1 pie	2 pie	1 pie	1 pie	½ pie	
Tattoos or mules, with riders, or laden,	4 pie	6 pie	3 pie	4 pie	3 pie	
Ditto, led, or unladen,	2 pie	3 pie	1½ pie	2 pie	1½ pie	
Horse, with rider, or laden,	1 anna	1½ anna	6 pie	1 anna	6 pie	
Ditto, led, or unladen,	6 pie	9 pie	4 pie	6 pie	3 pie	
Byli with riders, drivers, and bullocks,	4 annas	6 annas	3 annas	4 annas	2 annas	
Ruth, with ditto, ditto, ditto,	8 annas	12 annas	6 annas	8 annas	4 annas	
Ekko,	3 annas	4 annas	2 annas	3 annas	1½ anna	
Buggies and one horse carriages,	6 annas	8 annas	4 annas	6 annas	4 annas	
Two horse carriages,	12 annas	1 rupee	8 annas	12 annas	8 annas	
Four horse carriages,	1½ rupee	2 rupees	1 rupee	1½ rupee	1 rupee	
Carts with bullocks and driver empty, per bullock,	6 pie	9 pie	4½ pie	6 pie	3 pie	
Ditto laden, per bullock,	1 anna	1½ anna	9 pie	1 anna	6 pie	
Elephant,	1 rupee	1½ rupee	12 annas	1 rupee	8 annas	
Palanquin, dooly, or miana, with 2 bearers,	6 pie	9 pie	3 pie	6 pie	3 pie	
Ditto, with 4 bearers,	1½ anna	2 annas	1 anna	1½ anna	1 anna	
Ditto, with 6 bearers,	3 annas	4 annas	2 annas	3 annas	2 annas	
Ditto, with 8 or more bearers,	6 annas	8 annas	4 annas	6 annas	4 annas	
Sheep, swine, and goats,	½ pie	½ pie	½ pie	½ pie	½ pie	

N. B. The above rates include the passage of all persons *bonâ fide* accompanying the animals or conveyances therein mentioned.

twelfth part of the annual rent. The farmer or his servants will also be liable to punishment under the general regulations for any offence which they may commit against the laws in their management of the ferry. *Rule 6.* Farms shall not be given more than one year, nor to the same person for two contiguous ferries, without the sanction of government. Whenever a magistrate may desire to lease more than one ferry to one person or to grant leases for a longer period than one year he must make a special report on the subject to the government through the commissioner. *Rule 7.* The kists payable by the farmer in each month should be calculated as far as possible according to the ratio of the probable receipts in that month. *Rule 8.* The annexed form of lease B (b) and counterpart C (c) for the farm of a ferry

Farms to be
given for one year :
and no two ferries
to one person.

Kists.

Form of lease.

(b)

(B.)

Form of Lease of a Public Ferry.

1. A. B. inhabitant of C. son of D. is authorized to collect tolls according to the annexed schedule, from all persons crossing the E. ghât by the ferry boats, or (floating bridge) over the river F. from January 1st, 185—, to December 31st, 18—, both inclusive. 2. For this purpose he is empowered to station toll gatherers at not more than one place on either bank, who are hereby authorized to prevent any person, with the exceptions below noted, from crossing by the boat (or bridge) till the toll be paid. They are not authorized to prevent persons from fording the river. 3. Tolls shall be levied according to the annexed schedule, and no toll gatherer shall demand more than the authorized amount. 4. Every toll gatherer is bound to suspend in some conspicuous place, a schedule of tolls legibly written in English, Oordoo, and Hinddee, according to the annexed schedule. He shall also be bound to keep and produce on the demand of every passenger not on foot a similar schedule written on paper. 5. The aforesaid farmer A. B. is bound to pay into the magistrate's court the following sums by instalments on each date, as mentioned below :—

January 31st, 18—,	000 Co.'s Rs.
February 28th, —,	000 „
March 31st, 18—,	000 „
&c. &c. &c.	

Total, 000 Co.'s Rs.

6. The following persons shall be held exempted from demand on account of public tolls. *First.* Military men and camp followers, according to existing orders. *Second.* Civil officers of the government when travelling on the public service. *Third.* Foreign rulers and their followers or retainers, or other natives of distinction, when especially exempted by order of the government, or the commissioner, or the magistrate. *Fourth.* Cultivators, woodcutters, grasscutters &c., who daily cross, as may be determined between the magistrate and contractor. (This last exemption will vary or be omitted according to local usage.) 7. The aforesaid farmer A. B. is bound to maintain not less than 00 efficient boats always at the ghat, of 00 maunds burthen, measuring 00 feet in length, and 00 in breadth, of which not less than 0 shall have platforms measuring 12 feet each way. The magistrate shall determine whether the boats provided are sufficiently safe and trustworthy. If the magistrate declare any boat to be unsafe or unsuited to the purpose, the aforesaid farmer A. B. shall be bound to provide another within the space of one week. (This clause will of course be different in the case of a floating bridge.) 8. The farm shall not be underlet or transferred to another person without the consent of the magistrate. 9. The infraction of any of the above stipulations will enable the magistrate immediately to cancel the lease, in which case the farmer will be liable to a fine at the discretion of the magistrate, not exceeding the twelfth part of his annual rent, the same to be enforced, if not paid, by suit in the civil court. The farmer or his servants will also be liable to punishment under the regulations in force, according to the circumstances of each case.

(Signed) M. N.

Magistrate.

(c)

(C.)

Form of Subscription to a Copy of the above Lease by way of counterpart engagement.

1. A. B. inhabitant of C. son of D. have perused and understood all the stipulations contained in the above lease. To the terms therein prescribed, I give my consent, and hold myself bound by them. In evidence thereof I hereby affix my signature. I also find security for the payment of the instalments fixed in the lease, according to the annexed bond.

(Signed,)

A. B.

Farmer.

Witnesses attesting the signature

R. _____

S. _____

Bridges to be opened for passage of boats.

shall be generally used, but other stipulations not inconsistent with those that are prescribed may be introduced according to local circumstances. The farmers of bridges should be bound to open the bridge free of charge at stated hours twice in each day for the passage of boats. Govt. Order *W. P.* No. 3469, November 5, 1850; and No. 4307, November 6, 1847.

Rules for disbursement of funds.

3092. The government of the *Western* Provinces has laid down the following directions for the guidance of the road committees in the disbursement of the funds committed to their charge. *Rule 1.* The first object should be to keep all the district roads in a fair state

Chief object to keep roads in repair;

of repair during the season when traffic is most commonly conducted along them. This is the primary object for which the funds are appropriated, and till it is effected there cannot be any surplus for extraordinary purposes. *Rule 2.* When the existing district roads have

second, to improve chief lines.

been put into ordinary repair, any surplus which may remain should be devoted to the further improvement of the chief lines of commercial communication. *Rule 3.* The earliest

Lines to be marked out.

opportunity should be seized for surveying and marking out these lines, and no expensive works should be undertaken upon them till the superintending engineer has approved the line, which it is proposed to select. When the reference is made to the superintending engineer a copy of the reference should be sent through the commissioner to government, in order to ensure early attention to the subject. *Rule 4.* When the line has been selected

Estimate

and approved for the formation of a metalled and finished road, an estimate should be formed of the expense involved, and a note made of those parts which most need repair and improved means of transit. *Rule 5.* The first available surplus should be devoted to the

Worst parts to be repaired first.

improvement of those parts of the road, which offer the greatest obstacles to the passage of vehicles, such as marshes, sandhills, deep nullahs, or rivers; when these obstructions have been removed, then it will be time to pay attention to the less difficult parts of the route, and to place the whole in a completely finished state. *Rule 6.* Whenever the more perfect

If the best mode cannot be accomplished, expedients to be adopted.

and costly modes of overcoming obstructions upon a road cannot be accomplished, palliatives should be introduced so far as means will allow. If a bridge cannot be built, a good ferry boat may be provided, or the descents to the nullah kept in good repair, and perhaps a paved ford be added. It must always be remembered that one great obstruction, left unremedied, renders useless a whole line of most perfectly finished road, and that these obstructions are the points which require the greatest and most prompt attention. *Rule 7.*

Bridges most important.

Generally speaking, the provision for bridges and drains upon a line of road is of more importance than raising and metalling. *Rule 8.* No bridge or masonry work of any size,

Masonry works to be approved by engineer before commencement.

costing for instance more than 100 rupees, should be commenced without the approval of the executive officer, or superintending engineer. *Rule 9.* The committee will make every practicable exertion to keep themselves informed of the state of the roads in the district, both

Committee to keep themselves informed of the state of the roads.

by personal observation and the reports of casual travellers. The latter may be secured by keeping a book at the sudder station which should be presented to all travellers, proceeding otherwise than by dāk, in order that they may have an opportunity of recording any observations they may have made on the roads over which they passed. Govt. Order *W. P.* June 5, 1844.

3093. In the *Western Provinces* a special meeting of the road and ferry fund committee should be held in the latter fortnight of every August, at which there should be a general review of all that has been effected during the past season, and a careful record and consideration of all projects for the coming year with reference to the funds at the disposal of the committee. The report of this meeting should be forwarded to the commissioner so as to reach him before the close of the month of August, and should state to which of the projected works its efforts ought to be directed during the approaching season; and should give a general estimate of their expense and of the disbursements which will probably be necessary for the preservation of existing roads and works. The commissioner is to preside at the committee of the station, where he may be at the time resident; and should lose no time in considering the merits and practicability of all the proposed undertakings, and in signifying his assent or otherwise, in the former of which cases the committee is to proceed to the execution of them. The committee in case of urgency may request a reference to government which the commissioner is to transmit with his own remarks. The rule in paragraph 8 of the notification dated 10th February 1841* is equally applicable to disbursements from the one per cent. fund; but the preliminary approval by government is unnecessary in any case of outlay from that fund. Whenever a committee may desire to run a road to the boundary of its own district, it should communicate to the local committee of the neighbouring district the proposed line, and point at which it will touch that district, so that the precise direction may be determined with a view to unite the lines proposed by the several district committees. As soon as possible after the 1st of each January the commissioner should submit an annual report and sketch map, stating what may have been effected and at what expense by each committee in the division during the previous year, and detailing the sanctioned projects for the current year and the estimated expense of each. There should also be a comparative statement of the aggregate proposed outlay, and of the resources at the disposal of both funds. C. O. Govt. *W. P.* No. 229 B, March 3, 1854.

Special annual meeting of committee.

Report to be sent to commissioner.

Committee may refer to government.

* See para. 3090

If proposed road would go beyond the district.

Annual report of commissioner.

SECTION II.

OF TOLLS ON ROADS AND BRIDGES.

3094. The governor of the presidency of Fort William in Bengal, and the lieutenant governor of the North Western provinces of Bengal, may cause such rates of toll, not exceeding the rates mentioned in the schedule annexed to this Act(*a*), as they respectively

Local governments to fix the rate of tolls on roads and bridges

(a) <i>SCHEDULE.</i>					
On every four wheeled carriage on springs,	..	..	..	....	2 rupees.
On every two wheeled carriage on springs (except native hackeries,)	..	..	..	....	1 rupee.
On every native hackery on springs,	..	..	..	....	2 annas.
On every four wheeled carriage without springs,	..	..	..	....	6 annas.
On every two wheeled carriage without springs,	..	..	..	....	4 annas.
On every cart and hackery not on springs, and having wheels of less diameter than three feet six inches and tires less in breadth than three inches,	..	..	..	....	8 annas.

think fit, to be levied upon any road or bridge which has been, or shall hereafter be, made or repaired at the expense of the government; and may place the collection of such tolls under the management of such persons as may appear to them proper: and all persons employed in the management and collection of such tolls shall be liable to the same responsibilities, as would belong to them, if employed in the collection of the land revenue. Act VIII. 1851, sect. 2.

Levy of toll by seizure and sale.

3095. In case of non-payment of any such toll on demand, the officers appointed to collect the same may seize any of the carriages or animals on which it is chargeable, or any part of their burden of sufficient value to defray the toll; and, if any toll remains undischarged for twenty-four hours, with the cost arising from such seizure, the case shall be brought before the officer appointed to superintend the collection of the said toll, who may sell the property seized for discharge of the toll, and all expenses occasioned by such non-payment, seizure, and sale, and cause any balance that may remain to be returned, on demand, to the owner of the property; and the said officer, on receipt of the property, shall forthwith issue a notice that, at noon of the next day, exclusive of Sunday, or any close holiday, he will sell the property by auction. Provided that if, at any time before the sale has actually begun, the person whose property has been seized shall tender the amount of all the expenses incurred, and of double the toll payable by him, the said officer shall forthwith release the property seized. Act VIII. 1851, sect. 3.

Troops, military stores, and police officers, exempt.

3096. No tolls shall be paid for the passage of troops and military stores and equipages on their march, or of police officers on duty, or of any person or property in their custody; but no other exemption from payment of the tolls levied under this Act shall be allowed. Act VIII. 1851, sect. 4.

Police officers to assist toll collectors.

3097. All police officers shall be bound to assist the toll collectors, when required, in the execution of this Act; and, for that purpose, shall have the same power which they have in the exercise of their common police duties. Act VIII. 1851, sect. 5.

Punishment for unlawfully levying toll or excess of toll.

3098. Every person, other than the persons appointed to collect the tolls under this Act, who shall levy or demand any toll on any public road or

On every cart and hackery not on springs and not having wheels of less diameter than three feet six inches, and tires less in breadth than three inches,								2 annas.
Buffaloes or bullocks per head,	..	..	..	..	..	..	..	6 pie.
On every elephant,	..	..	..	..	..	..	..	1 rupee.
On every camel,	..	..	..	..	..	..	..	4 annas.
On every horse,	..	..	..	..	..	..	..	1 anna.
On every tattoo,	..	..	..	..	..	..	..	6 pie.
On every score of sheep or goats,	..	..	..	..	..	..	..	2 annas.
On every herd of swine per hundred,	..	..	..	..	..	..	..	4 annas.
On every mule,	..	..	..	..	..	..	..	8 pie.
On every ass,	..	..	..	..	..	..	..	2 pie.
On every palanquin or tonjon with bearers,	..	..	..	..	..	..	..	1 rupee.
On every palna or small native palanquin with bearers,	..	..	..	..	..	..	..	4 annas.
On every native dooly with bearers,	..	..	..	..	..	..	..	2 annas.
On every person carrying a load for hire,	..	..	..	..	..	..	..	2 pie.

N. B. Animals drawing any vehicle for which toll can be demanded are not to be also charged with toll.

bridge, or for passing through any bazar situated thereon, and also every person who shall unlawfully and extortionately demand, or take any other, or higher, toll than the lawful toll, or under colour of this Act seize or sell any property, knowing such seizure or sale to be unlawful, or in any manner unlawfully extort money, or any valuable thing from any person under color of this Act shall be liable, on conviction before a magistrate, to imprisonment for any term not exceeding six calendar months, or to fine not exceeding two hundred rupees, any part of which fine may be awarded by the magistrate to the person aggrieved: but this remedy shall not be deemed to bar, or affect, his right to have redress by suit in the civil court of the zillah. Act VIII. 1851, sect. 6.

3099. A table of the tolls authorized to be taken at any toll-gate or station shall be put up in a conspicuous place near such gate or station legibly written or printed in English words and figures, and also in those of the vernacular language of the district; to which shall be annexed, written or printed in like manner, a statement of the penalties for refusing to pay the tolls and for taking any unlawful toll. Act VIII. 1851, sect. 7.

Table of tolls to be exhibited at toll gate.

3100. The tolls, levied under this Act, shall be deemed public revenue; but the net proceeds thereof shall be applied wholly to the construction, repair, and maintenance of roads and bridges within the presidency in which they are levied. Act VIII. 1851, sect. 8.

Appropriation of tolls.

CHAPTER II.

OF LOCAL IMPROVEMENTS.

SECTION I.

OF LOCAL AGENCIES.

3101. The general superintendence of all lands granted for the support of mosques, Hindu temples, colleges, and for other pious and beneficial purposes; and of all public buildings, such as bridges, sarais, kutras, and other edifices; is vested in the boards of revenue. Reg. XIX. 1810, sect. 2.

Superintendence of lands endowed for certain purposes is vested in the board of revenue.

3102. It is the duty of those boards to take care that all endowments made for the maintenance of establishments of the above description are duly appropriated to the purpose for which they were destined by the government or individual by whom such endowments were granted. In like manner it is the duty of those boards to provide, with the sanction of government, for the due repair and maintenance of all public

The board is to be careful that the endowments are duly appropriated, and the buildings kept in repair.

edifices(a), which have been erected at the expense of either the former or present government or of individuals; and which either at present are or can conveniently be rendered conducive to the convenience of the community. Reg. XIX. 1810, sect. 3.

Buildings decayed or useless how to be disposed of.

3103. In those cases however in which any of the buildings in question have fallen to decay, and cannot from that or other causes be conveniently repaired, or are not calculated, if repaired, to afford any material accommodation to the public, the boards are to recommend that they be sold on the public account, or otherwise disposed of, as may appear most expedient. Reg. XIX. 1810, sect. 4.

The board is to be careful that such lands or buildings are not appropriated to private purposes.

3104. Under the foregoing rules it is of course incumbent on those boards to prevent any lands, which have been granted for the support of establishments of the above description, from being converted to the private use of individuals, or appropriated in any other mode contrary to the intent and will of the donor: and likewise to prevent all public edifices from being usurped by individuals, and falling into the possession and exclusive use of private persons. Reg. XIX. 1810. sect. 5.

Estimates of necessary repairs to be submitted to government.

3105. Whenever the boards of revenue are of opinion that any of the above-mentioned edifices [i. e. mosques, Hindu temples, colleges, and other buildings appropriated to pious and beneficial purposes] require repair, they are to obtain the necessary estimates of the expense required for the execution of the work, and forward them to government for its approval. Reg. XIX. 1810, sect. 6.

Superintendence of escheats vested in board of revenue.

3106. The general superintendence of all nazul property or escheats is likewise vested in the boards of revenue, who are to inform themselves fully, through the channel hereafter mentioned, of all property of that description, and to report to government whether it should in their opinion be sold on the public account, or in what other mode it should be disposed of. Reg. XIX. 1810, sect. 7.

The above powers are vested in the commissioners of revenue, subject to the authority of the board of revenue.

3107. The commissioners of revenue are to exercise the powers vested in the board of revenue in regard to the general superintendence of nazul property or escheats, subject to the authority of the board, who are to inform themselves of all property of that description by means of the local commissioner, and to report to government, whether it should, in their opinion, be sold on account of government, or otherwise disposed of. The general superintendence of all lands granted for pious or beneficial purposes, and of the public edifices specified above, is in like manner vested in the commissioners, to whose immediate orders and control the local agents are to be subject. Rules of practice for commissioners of revenue, Nos. 49 and 50.

Local agent appointed for these purposes under the board of revenue.

3108. To enable the boards of revenue the better to carry into effect the duties entrusted to them by this regulation, local agents are appointed in each zillah, subject to the authority, control, and orders of those boards respectively. Reg. XIX. 1810, sect. 8.

(a) "The general superintendence of all lands assigned as endowments for the maintenance of bridges, sarais, and kutras, shall remain as heretofore vested in the board of revenue and board of commissioners; but such parts of Reg. XIX. 1810, as require that those boards should provide, with the sanction of government, for the due repair of public edifices of this description, are hereby rescinded." Reg. XVII, 1816, sect. 16. They are now placed under the control of the superintendents of police; see paras: 8120 *et seq.*

3109. The collector of the zillah is *ex-officio* one of those agents, with whom the government is to unite such other persons, whether members of the public services, or otherwise, as may from time to time be judged expedient. Reg. XIX. 1810, sect. 9. Act XXXVIII. 1837.

Collector is *ex-officio* one of the agents, and government to appoint others,

3110. By order of government all magistrates are *ex-officio* members of local agencies. C. O. Sup. Pol. L. P. No. 9 of 1841.

Magistrate is *ex-officio* a local agent.

3111. In cases in which it becomes necessary, under these provisions, to institute an investigation into the appropriation of the funds assigned for the support of public institutions, the local agents are authorized, if it appears expedient, to convene a committee of natives of respectability, willing to undertake the duty, and of the proper persuasion according to the nature of the institution or endowment to which the inquiry has reference, to conduct the investigation under their superintendence and control. They are further competent to exercise their discretion in employing the agency, or availing themselves of the aid, of respectable natives, whom they find willing to assist in the general administration of the functions committed to them, and to determine the nature and extent of the interference which such persons are to exercise. C. O. S. B. R. L. P. No. 52, February 4, 1820.

The local agents may avail themselves of the aid and employ the agency of respectable natives.

3112. Under the above provisions, it is of course the duty of the agents to obtain full information from the public records, and by personal inquiries, respecting all endowments, establishments, and buildings of the nature of those above described, and of all nazul property and escheats; and to report to the commissioner any instances in which they have reason to believe that the lands or buildings are improperly appropriated; being in all cases careful not to infringe any private rights, or to occasion unnecessary trouble or vexation to individuals. Reg. XIX. 1810, sect. 10.

Such agents to obtain information regarding such endowments, &c, and to report on them.

3113. Officers of government are not to interfere with endowments for the maintenance of institutions purely religious without an application from the heads of the community connected with or interested in the institutions. C. O. S. B. R. L. P. No. 497, November 6, 1838.

Endowments purely religious not to be interfered with.

3114. The agents were required to ascertain and report the names, together with other particulars, of the (then) present trustees, managers, or superintendents of the several institutions, foundations, or establishments above described; whether under the designation of mutawalli or any other; and by whom and under what authority appointed or elected; and whether in conformity to the special provisions of the original endowment and appropriation by the founder, or under any general rule or maxim applicable to such institutions and foundations. Reg. XIX. 1810, sect. 11.

The agents were required to ascertain of the then trustees, or managers, and by whom appointed.

3115. The local agents are to report all vacancies and casualties which occur, with full information of all circumstances, to enable the commissioner and board to judge of the pretensions of the person or persons claiming the trust; particularly whether the succession has been heretofore by inheritance in the line of descent; or whether the successor has been in former instances elected, and by whom; or whether he has been nominated by the founder, or his heir or representative, or by any other individual patron of the foundation, or by any

The agents are to report all vacancies with full information as to the pretensions of claimants.

officer or representative of government, of directly by the government itself. Reg. XIX. 1810, sect. 12.

The agents are to recommend fit persons when the nomination is vested in or devolves upon government.

3116. In those cases in which the nomination has usually rested with the present or former government, or with a public officer, or of right appertains to government in consequence of no private person being competent and entitled to make sufficient provision for the succession to the trust and management, it is the duty of the local agents to propose, for the approval and confirmation of the superior authorities, a fit person or persons for the charge of trustee or manager and superintendent, duly attending to the qualifications of the person selected, and to any special provisions of the original endowment and foundation, and to the general rules and known usages of the country applicable to such cases. Reg. XIX. 1810, sect. 13.

The board is to appoint such persons, or to make such other provision for the trust as is deemed right.

3117. On the receipt of the report and information required above, the board of revenue is either to appoint the person or persons nominated for their approval; or is to make such other provision for the trust, superintendence, and management, as may be right and fit with reference to the nature and conditions of the endowment; having previously called for any requisite further information from the local agents. Reg. XIX. 1810, sect. 14.

Individuals deeming themselves injured by orders passed under this regulation may sue for the recovery of their rights, or for damages.

3118. Nothing contained in this regulation is to be construed to preclude any individual, who conceives that he has just grounds of complaint on account of any orders which are passed by any of the above-mentioned authorities, with respect to the appropriation of any lands or buildings of the nature of those above described, from suing in the mode and form prescribed by the regulations, where government or public officers are parties; or under the general provisions of the regulations, if the suit is brought against a competitor, or other private person; for the recovery thereof in the regular course of law, or for compensation in damages for any loss or injury supposed to have been unduly sustained by him. Reg. XIX. 1810, sect. 15.

Specification of the objects of this regulation.

3119. It is to be clearly understood that the object of this regulation is solely to provide for the due appropriation of lands granted for public purposes agreeably to the intent of the grantor, and not to resume any part of the produce of them for the benefit of government. In like manner it is fully intended that all buildings erected by the former or present government, or by individuals for the convenience of the public, should be exclusively appropriated to that purpose, with the exception of such as have fallen to decay and cannot from that, or any other cause be, conveniently repaired, or which under existing circumstances can no longer contribute to the accommodation of the community. Reg. XIX. 1810, sect. 16.

SECTION II.

OF PUBLIC WORKS.

3120. The superintendents of police are to exercise a general control over the public roads, bridges, sarais, and kutras, within the limits of their respective jurisdictions. Reg. XVII. 1816, sect. 17, cl. 1.

General control of superintendent of police over roads, &c.

3121. Whenever the local magistrates are of opinion that any works of the description specified in the preceding clause are necessary in the cities or zillahs subject to their authority, they are to communicate their sentiments upon the subject to the superintendent of police, instead of addressing themselves directly to government. Reg. XVII. 1816, sect. 17, cl. 2.

Magistrate is to communicate with him regarding such works.

3122. On receipt of communications of the description above-mentioned, the superintendents of police are to consider not merely the local advantages which may attend the proposed works, but likewise their tendency to facilitate the communication between the several districts, and their general utility, whether in the promotion of the commercial or common interests of the country at large. Reg. XVII. 1816, sect. 17, cl. 3.

What points the superintendent is to consider, in regard to such works;

3123. The superintendents of police are likewise to ascertain how far the labor of the convicts confined in the several districts, within their respective jurisdictions, can be employed in the execution of the proposed works without withdrawing them from other works of equal or greater utility. Reg. XVII. 1816, sect. 17, cl. 4.

and how far the labor of convicts is available;

3124. The magistrates are to furnish the superintendents of police with such information as is required by such officers in regard to the employment of the convicts and the state of the public works. Reg. XVII. 1816, sect. 17, cl. 5.

the magistrate supplying the necessary information.

3125. Whenever it is necessary, under the orders of government, to collect any number of convicts together for the execution of public works, and such convicts cannot be supplied from the sudder station of the district in which their services are required, the superintendents of police are to make application to government, stating the number of prisoners required, the work on which it is proposed that they should be employed, and the districts from which in their opinion they can be most conveniently supplied; and the government is to determine on the expediency of the removal of the convicts, and to issue such instructions on the subject to the local magistrates as are deemed proper. Reg. XVII. 1816, sect. 18.

Steps to be taken if convicts are required from other zillahs for such works.

3126. In cases in which the superintendents of police are of opinion, whether on consideration of reports from the local magistrates, or from other sources of information, that any public works, of the description specified above, should be undertaken at the expense of government, they are to ascertain from the local authorities, and as far as practicable from professional persons, the expense to which government would be subject in the execution of the proposed works, and are to submit a full and comprehensive report on the

Report to be made if the superintendent considers that such works should be undertaken at the expense of government,

subject to government, containing the necessary information in regard to the utility of the work, together with an estimate of the probable expense attending its execution. Reg. XVII. 1816, sect. 19, cl. 1.

stating what funds are available for such purposes.

Expensive works not to be recommended unless specially useful.

System for the preservation and maintenance of fair-weather roads in Bengal.

3127. In submitting reports of the above description, the superintendents of police are to be careful to ascertain whether any means can be devised for defraying the expense of the proposed works otherwise than from the general funds of government; and they are to refrain from recommending any expensive undertakings, except in cases which promise to be attended with more than ordinary convenience and advantage. Reg. XVII. 1816, sect. 19, cl. 2.

3128. The government of Bengal, under date the 23rd March 1854, sanctioned the adoption of the following system for the preservation and maintenance in good repair of all fair-weather roads in Bengal. Immediately after the rains, such roads are to be placed in order, and from time to time as required, and after rain, they are to be kept in order; the bill being presented at the end of the season, with a certificate from the government officers who have had the best opportunity of judging of the condition in which the roads have been maintained,—the expenditure being fixed within a certain sum per mile. This sum, which, according to the climate, the dimensions of the road, the nature of the soil, and extent of traffic, will vary from 30 to 50 and even to 100 rupees per mile, should be well ascertained for sanction by government, an advance being made at the end of every rainy season, to enable the officers in charge to place the road in order without delay; any saving on the amount being paid back at the season's end, and a receipt of the collector appended to the bill. This system may with advantage be carried out for all the fair-weather roads in Bengal. C. O. Board of Revenue No. 12, April 7, 1854.

Preservation of ancient structures.

3129. In the Western provinces, magistrates within whose jurisdiction there may exist ancient structures of marked interest and beauty, which, by timely care and at a moderate expense, may yet be protected from decay, are to bring from time to time to the early notice of government any apparent necessity for the adoption of measures with a view to guard them from destruction. There must of course be a limited selection of objects of this nature. Government Order, *W. P.* No. 213A, December 7, 1853.

SECTION III.

OF THE ACQUISITION OF LAND FOR PUBLIC PURPOSES.

Land may be taken by government under the provisions of this Act after declaration made that it is required for a public purpose.

3130. Whenever it appears to the local government that any land is required to be taken by government at the public expense for a public purpose, a declaration shall be made to that effect under the signature of a secretary to the government, or of some officer duly authorized to certify the orders of the government, and such declaration shall be conclusive evidence that the purpose for which the land is needed is a public purpose; and, after making

such declaration, the government may take any such land in the manner hereinafter provided. Act VI. 1857, sect. 2.

3131. Whenever any land shall have been declared to be so required for a public purpose, the government shall direct the collector of the district, or some other officer specially appointed in that behalf, to take order for the acquisition of the land in the manner hereinafter provided. Act VI. 1857, sect. 3.

After declaration, collector shall be directed to take order for acquisition of land as hereinafter provided.

3132. The collector or other officer shall thereupon cause the land to be marked out and measured, and a plan to be made of the same. After the land has been so marked out and measured, he shall cause a notice to be affixed in some conspicuous place upon the land, and published by proclamation in the neighbouring bazars and villages, to the effect that the land is about to be taken by government for a public purpose; and shall also give notice to the same effect to the occupier (if any) of such land, and to all such persons known or believed to be interested therein or to be entitled by section 38 of this Act to act for persons so interested as shall reside or have agents within the collectorate or other revenue district in which the land is situate, by serving such notice on such persons or their agents. Such notice shall contain a citation calling on all persons interested in the land to appear personally or by agent at a time and place therein mentioned, such time not being less than fifteen days after the date of publication of the notice, and to state the nature of their interests in the land, and the amount and particulars of their claims to compensation for the same. Act VI. 1857, sect. 4.

Collector shall cause the land to be marked out and measured, and a plan to be made of the same; and give notice to all persons interested in the land.

3133. On the day fixed, the collector or other officer shall proceed to enquire summarily into the value of the land and the amount of compensation to be awarded: and, if he and all the persons interested who have attended in pursuance of the notice agree as to the amount of compensation to be allowed, shall make an award for the same; and if the said persons agree also in the apportionment of the compensation, such apportionment shall be specified in the award. The award shall be final and conclusive in regard to the value of the land and the amount of compensation for the same; and also in regard to the apportionment (if any) of the compensation among the persons who have agreed thereto. The collector or other officer may, if no claimant shall attend pursuant to the notice, or if he shall think fit for any other cause, postpone the enquiry to a day to be fixed by him and notified in the manner provided in the preceding section. Act VI. 1857, sect. 5.

Collector to enquire into the value of the land, and the amount of compensation to be awarded.

Collector with consent of parties to make award which shall be conclusive.

Postponement of enquiry.

3134. When the collector or other officer proceeds to make the enquiry as aforesaid, whether on the day originally fixed for the enquiry or on the day to which the enquiry may have been postponed, if no claimant shall attend, or if the said collector or other officer shall be unable to agree with the persons interested who have attended in pursuance of the notice as to the amount of compensation to be allowed, the matter shall be referred to the determination of arbitrators to be appointed in the manner hereinafter provided. Act VI. 1857, sect. 6.

If no claimant attends, or if collector and persons interested are unable to agree as to the amount of compensation, the dispute shall be referred to arbitrators.

3135. If upon the said enquiry any question arise respecting the title to the land or any rights or interests therein, between two or more persons making conflicting claims in respect thereof, the person deemed by the collector or other officer to be in possession as owner, or in receipt of the rents as being entitled thereto, shall, for the purpose only of

Who shall be deemed to be interested in the land in cases of conflicting claims.

taking such measures as may be necessary for fixing the value of the land and the amount of compensation to be allowed for the same, be held as between such persons to be the person interested in the land. Act VI. 1857, sect. 7.

After collector's award or reference to arbitration, possession may be taken, and the land shall be vested absolutely in the government.

3136. When the collector or other officer has made an award or directed a reference to arbitration, he may take immediate possession of the land which shall thenceforward be vested absolutely in the government, free from all other estates, rights, titles, and interests. Act VI. 1857, sect. 8.

Magistrate to enforce surrender of land.

3137. If the collector or other officer is opposed or impeded in taking possession of such land, he shall apply to the magistrate who shall enforce the surrender of the land. Act VI. 1857, sect. 9.

Appointment of arbitrators

Collector, and person interested each to appoint one.

If joint interest.

3138. When any case is referred to arbitration, the collector or other officer, and the person interested in the land, shall, unless they concur in the appointment of a single arbitrator, each appoint one arbitrator; if there be several persons having a joint interest in the land, and they cannot agree in the appointment of an arbitrator, such disagreement shall be deemed a refusal to appoint within the meaning of the next following section. Act VI. 1857, sect. 10, cl. 1.

If several separate and distinct interests.

3139. If there be several persons having distinct and separate interests in the land, and they cannot agree in the appointment of an arbitrator on their behalf, it shall be competent to the collector or other officer (subject to the orders of the commissioner or other superior revenue authority) to refer the question of the compensation to be allowed for each of such distinct and separate interests to a separate arbitration, or to select any one of the persons interested whose interest appears to him to qualify such person to represent the others; and the person so selected shall appoint an arbitrator on behalf of all the persons interested. Act VI. 1857, sect. 10, cl. 2.

Appointment cannot be revoked without consent.

3140. In every case the appointment shall be in writing, and neither of the parties to the arbitration shall have power to revoke the same without the consent of the other. Act VI. 1857, sect. 10.

If no claimant attends, or if no arbitrator is appointed by the persons interested, the arbitrator appointed by the collector shall proceed to arbitrate.

3141. If no claimant shall have attended, or if the persons interested in the matter in dispute or authorized to act in that behalf, refuse or neglect for the period of fifteen days to appoint an arbitrator, then a single arbitrator appointed by the collector or other officer shall arbitrate the matter. Provided that the person so appointed shall not be an officer of government. Act VI. 1857, sect. 11.

Appointment of a third arbitrator.

3142. When more than one arbitrator shall be appointed, the arbitrators shall, before they enter upon the matter referred to them, nominate and appoint by writing a third person to act with them as arbitrator; and in case the arbitrators shall neglect to appoint such third person for a period of one week after having been required to do so, the collector or other officer shall appoint a third arbitrator. Act VI. 1857, sect. 12.

Arbitrator refusing or becoming incapable to act, &c.

3143. If any person, on being appointed an arbitrator, shall refuse to act, or, after accepting the appointment, shall die or become incapable of acting, another person shall be appointed in his stead, in the same manner in which the first person was appointed. Act VI. 1857, sect. 13.

3144. When the amount of compensation is referred to arbitration, it shall be competent to the collector or other officer, with the written consent of all the persons interested, to require the arbitrators to determine the proportions in which all such persons are entitled to share in the amount awarded. Act VI. 1857, sect. 14.

The arbitrators may by consent determine the proportions in which the persons interested are entitled to share in the amount of compensation awarded.

3145. When the collector or other officer and the persons interested in the land agree as to the amount of compensation, or when such amount shall have been settled by arbitration, if any dispute shall arise as to the apportionment of the same or any part thereof, it shall be competent to the collector or other officer, with the written consent of all persons interested in the matter in dispute, to refer the same to arbitration. If the parties cannot agree with respect to the nomination of the arbitrators, or if the persons nominated by them shall refuse to accept the arbitration, or, having accepted it, shall refuse to act, and the parties are desirous that the nomination shall be made by the collector or other officer, he shall appoint some proper person or persons to arbitrate the matter. The provisions of this Act relating to arbitrators appointed under sections 10 and 11 and to the proceedings of such arbitrators shall be applicable to persons appointed arbitrators under this section. Act VI. 1857, sect. 15.

Appointment of arbitrators by consent to apportion the compensation in cases where the amount thereof has been agreed upon or has been settled by arbitration.

3146. After the arbitrators have accepted the appointment, the collector or other officer shall be competent to exercise towards them such powers and authority for securing their attendance and the due completion of their award, as the collector may legally exercise towards witnesses summoned before him when acting judicially for the purpose of compelling them to attend and give evidence. Act VI. 1857, sect. 16.

Collector to exercise certain powers for securing attendance of arbitrators and completion of award.

3147. If no award be made within a period to be fixed for that purpose by the collector or other officer, he may order that the matter shall be referred to another arbitrator or other arbitrators to be chosen in the same manner and subject to the same rules as the first. Act VI. 1857, sect. 17.

In default of award within a specified period, other arbitrators may be chosen.

3148. The collector or other officer shall furnish to the arbitrators, or so far as may be in his power procure for them, any information which his records or those of any public department may afford connected with the subject of enquiry. He shall, on the application of the arbitrators, summon any witnesses whom the arbitrators may call for and whom the parties may not be able to produce before them without such process, and require the persons so summoned to bring and produce before them all such books, papers, deeds, writings, maps, and plans, as they shall require. Persons so summoned shall be subject to all the provisions of the laws in force regarding persons summoned as witnesses before the collector when acting judicially. Act VI. 1857, sect. 18.

Collector to furnish information to the arbitrators, and to enforce the attendance and examination of witnesses, &c.

3149. Every witness examined before the arbitrators shall be examined upon oath or affirmation to be administered by or made before the said arbitrators. Act VI. 1857, sect. 19.

Witnesses to be examined upon oath, &c., before arbitrators.

3150. On the close of the enquiry, the arbitrators or a majority of them shall deliver a full and complete award in respect of the matter referred to them, and shall therein specify (as the nature of the case may require) the amount and particulars of compensation awarded by them, the persons entitled to compensation, and the proportions in which they are so entitled. Act VI. 1857, sect. 20.

Award of the arbitrators.

Remuneration of arbitrators.

3151. The arbitrators on making their award shall be entitled to reasonable fees for their services, the amount of which shall be fixed by the collector or other officer subject to the orders of the commissioner or other superior revenue authority. Act VI. 1857, sect. 21.

Costs.

3152. The award shall declare the costs of the arbitration and by whom and in what proportion they shall be paid. All costs, including the fees of the arbitrators, incurred for the purpose only of determining the amount of compensation to be allowed for the land, shall be charged to the government, unless the arbitrators shall award as compensation the same or a less sum than shall have been offered by the collector or other officer, in which case each party shall bear his own costs so incurred and shall also pay a moiety of the fees of the arbitrators. Costs incurred for determining the apportionment of the compensation among the persons interested shall be paid by such persons in such proportions as the arbitrators shall direct. Act VI. 1857, sect. 22.

Proceedings of the arbitration to be deposited in the collector's office.

3153. The proceedings of the arbitration shall be deposited in the office of the collector or other officer; and every person interested therein shall be entitled to a copy of the award on plain paper under the seal and signature of the collector or other officer, which copy shall be *prima facie* evidence thereof. Act VI. 1857, sect. 23.

Compensation to include damage done to adjoining land.

3154. When any land is taken under the provisions of this Act, the amount of compensation to be awarded shall include any damage which may be sustained by any of the persons interested therein in respect of any adjoining land held therewith. Act VI. 1857, sect. 24.

If compensation be awarded for damage, the value of the land and the amount of damage to be specified separately.

3155. If any compensation beyond the value of the land be awarded on account of any damage which may be sustained by any person interested in the land, the award shall specify the value of the land and the amount of such damage separately, and also the name of the person to whom compensation for damage is awarded. Act VI. 1857, sect. 25.

Proceeding where land paying revenue to government is taken.

3156. When any land taken under this Act forms part of an estate paying revenue to government, the award shall specify the net rent of the land including the government revenue, and the computed value of such rent: and it shall be at the discretion of the revenue authorities either to pay over the whole of such value to the owner of the estate on the condition of his continuing to pay the jumma thereof without abatement; or to determine what proportion of the net rent shall be allowed as a remission of revenue, in which case a deduction shall be made from the said value proportionate to the value of such remission. Act VI. 1857, sect. 26.

Amount of compensation which and how to be paid.

3157. When the amount of compensation to be paid for land taken under the provisions of this Act is determined by the award of the collector or other officer under section 5, he shall pay the amount awarded at the time when possession is taken of the land on account of government. When the compensation is determined by the award of arbitrators under section 20, the collector or other officer shall pay the amount awarded with interest at the rate of 6 per centum per annum from the time when possession was taken of the land on account of government. Act VI. 1857, sect. 27.

Payment of compensation to whom to be made.

3158. Except as provided in the next following section, payment of the compensation shall be made, according to the award, to the persons named therein. Provided

always that nothing in this Act contained shall affect the liability of any person who may receive the compensation awarded for any land or any portion of such compensation to pay the same to the person lawfully entitled thereto. Act VI. 1857, sect. 28.

Proviso.

3159. If there exist any ground which, in the judgment of the collector or other officer, renders it improper to make immediate payment of the compensation, or of any portion thereof, to any of the persons having or claiming any interest in the land or in the compensation awarded in respect thereof, the amount, or such portion of the amount as he may deem sufficient, shall be invested in government securities, and held in deposit until an order of court shall be obtained for the payment thereof. Such order shall be obtained in the court which would have had jurisdiction in respect of the land taken. Act VI. 1857, sect. 29.

Payment of compensation may in certain cases be deferred.

Amount to be held in deposit until an order of court is obtained for payment thereof.

3160. If the land taken be within the local limits of any of her majesty's supreme courts of judicature, and the amount of compensation awarded do not exceed five hundred rupees, the order may be made by the court of small causes. Act VI. 1857, sect. 30.

In certain cases the small cause court may order payment.

3161. No award of arbitrators made in accordance with the provisions of this Act, shall be liable to be reversed or altered, except by the decision of a civil court on the ground of corruption or misconduct of the arbitrators. In case the award shall be so reversed, the matter shall be referred to another arbitrator or other arbitrators to be appointed in the same manner as the first. All suits to set aside an award under this Act shall be instituted within three months from the date of the award. Act VI. 1857, sect. 31.

Reversal or alteration of award.

3162. The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house or other building or manufactory, if the owner desire that the whole of such house, building, or manufactory shall be taken. Act VI. 1857, sect. 32.

A part of a house or building not to be taken.

3163. Whenever any land is needed for a road, canal, railway, or the like, and the local government makes the declaration provided in section 2, it shall not be necessary to specify the extent, limits, or position of the land, but it shall be sufficient to declare the general direction of the line of the work and the average breadth of the land required for the same. Act VI. 1857, sect. 33.

When land is needed for a road, canal, &c., the general direction of the line shall be declared.

3164. When declaration has been made under the provisions of section 2 of this Act, the collector or other officer may authorize any person, with his servants and workmen, to enter upon the land for the purpose of making a survey thereof; and in the case of a road, canal, or railway, to set out the intended line thereof, and to mark such line by cutting a trench or placing land-marks; and where otherwise the survey cannot be completed, and the line marked, to cut down and clear away any part of any jungle or tope of trees in the direction of the intended line. Provided that no person shall enter into any house or building or upon the curtilage of any house or any enclosed garden (unless with the consent of the occupier thereof) without previously giving the said occupier twenty-four hours' notice of his intention to do so. Act VI. 1857, sect. 34.

After declaration, persons authorized may enter upon the land and make a survey.

Line of road may be marked out.

Land may be cleared.

Previous notice of entry to be given to occupiers of houses, &c.

3165. It shall be the duty of the collector or other officer to take account of all necessary damage done as aforesaid, and forthwith to offer payment for the same to the

Account of damage to be taken and payment to be offered.

persons interested. In case the offer is not accepted, the damage shall be allowed for in the compensation to be awarded. Act VI. 1857, sect. 35.

Obstruction to
setting out line of
works, &c.

3166. Whoever wilfully obstructs any person in lawfully setting out the line of any road, canal, or railway, or wilfully destroys, damages, or displaces any landmark, or effaces or fills any trench intended to mark such line, shall, on conviction, be liable to be imprisoned for any term not exceeding six months, or to fine not exceeding two hundred rupees, or to both. Act VI. 1857, sect. 36.

Temporary occu-
pation of adjacent
land.

3167. The powers of this Act shall extend, in the case of any road, canal, or railway, to authorize the temporary occupation of any land not more than one hundred yards from the centre line of the road, canal, or railway, as marked on the ground, for taking earth or other materials for making or repairing the road, canal, or railway, or for depositing thereon superfluous earth or other materials, or erecting temporary buildings and workshops thereon, and of any land which may be needed for making temporary roads from any public road to the intended line of railway. And for the temporary occupation of any such land, and for any permanent damage done by such occupation and use of the land, including the full value of all clay, stone, gravel, sand, and other materials taken thence, compensation shall be paid to and among all persons having an interest therein, to be ascertained, in case of disagreement, in the same manner as compensation for land permanently taken. Act VI. 1857, sect. 37.

Compensation
for temporary oc-
cupation.

Trustees, com-
mittees of lunatics,
&c. empowered to
act.

3168. In any proceedings under this Act the following persons shall be deemed persons entitled to act as and to the extent hereinafter provided (that is to say)—A trustee or trustees for other persons beneficially interested shall in all cases be deemed the person or persons entitled to act with reference to any such proceedings, and that to the same extent as the persons beneficially interested could have acted if free from disability. A married woman, in cases to which the English law is applicable, shall be deemed the person so entitled to act, and, whether of full age or not, to the same extent as if she were unmarried and of full age. The guardians of minors and the committees of lunatics or idiots shall be deemed respectively the persons so entitled to act to the same extent as the minors, lunatics, or idiots themselves, if free from disability, could have acted. Act VI. 1857, sect. 38.

Interpretation of
the terms,

local government,

land,

3169. The following words and expressions in this Act shall have the several meanings hereby assigned to them, unless there be something either in the subject or context repugnant to such construction (that is to say)—The words “the local government” shall mean the person or persons for the time being immediately administering the executive government of that portion of the territories in the possession and under the government of the East India Company in which the land in question is situate; and shall include any chief commissioner or other chief civil officer of a province whom the governor general in council may authorize to exercise the powers vested by this Act in the local government. The word “land” shall extend to tenements and hereditaments of any tenure, and all houses, buildings, trees, or appurtenances thereupon, as well as land.

The expression “ person interested in the land ” shall include all persons interested in the land either for life or for years, or in remainder, reversion, or succession, and all mortgagees, lease-holders, or tenants, not being tenants by the month or at will, of such land. Words importing the singular number only shall include the plural, and words importing the plural number only shall include the singular. Words importing the masculine gender only shall include females. The word “ person ” shall include a corporation. Act VI. 1857, sect. 39.

persons interest-
ed in the land;
number and
gender ;

persons.

SECTION IV.

OF MUNICIPAL COMMISSIONERS.

3170. If it shall appear to the governor, or governor in council, or lieutenant governor, of any presidency or place within the territories under the government of the East India Company, that the inhabitants of any town or suburb, not within the towns of Calcutta, Madras, or Bombay, are desirous of making better provision for making, repairing, cleaning, lighting, or watching, any public streets, roads, drains, or tanks, or for the prevention of nuisances, or for improving the said town or suburb in any other manner, the said governor, or governor in council, or lieutenant governor, may order this Act to be put in force within such town or suburb. Act XXVI. 1850, sect. 2.

Government may
extend this Act to
any but the presi-
dency towns.

3171. Whenever any application shall be made to the government for putting this Act in force in any town or suburb, notice thereof shall be given in the government gazette of the presidency, or place, and also by proclamation within such town or suburb, setting forth the purposes of the application, and giving reasonable time for all inhabitants of such town or suburb, who are so minded, to declare themselves for or against the adoption of this Act therein for such purposes or any of them. Act XXVI. 1850, sect. 3.

Notice to be
given of all applica-
tions for extension
of this Act.

3172. The governor, or governor in council, or lieutenant governor, shall take all such declarations into due consideration, and, after the time allowed for receiving the same, shall make a final order, which shall be published in the government gazette, and also notified by proclamation within such town or suburb, to the effect that the application appears, or does not appear, to be according to the wishes of the inhabitants, either wholly, or in respect to one or more of the purposes in respect of which it is made; and if the whole or any part of it shall appear to be according to the wishes of the inhabitants, then that this Act shall be thenceforth in force in such town or suburb, for such purposes only as shall be mentioned in the order. Act XXVI. 1850, sect. 4.

Government to
decide upon the
application, and to
publish their order.

3173. Whenever any such order shall be made and published as aforesaid, this Act shall come into force within the said town or suburb, for such purposes as are mentioned in the order; and the making and publication of the said order shall be conclusive evidence that the provisions of this Act have been complied with, and that it is thenceforth in force within the said town or suburb, for such purposes as are mentioned in the order. Act XXVI. 1850, sect. 5.

Act to come into
force on the publi-
cation of the order.

Appointment of the commissioners for putting Act in force.

3174. • Whenever this Act shall come into force in any town or suburb, the governor, or governor in council, or lieutenant governor, shall appoint the magistrate and such number of the inhabitants thereof as to him shall appear necessary, to be commissioners for putting the Act in force, and shall give authority to them to prepare rules for more effectually accomplishing the purposes for which they are appointed; which rules, when approved by the governor, or governor in council, or lieutenant governor, shall be of the same force within the said town or suburb, until altered or rescinded as hereinafter provided, as if they were inserted in this Act. And the said governor, or governor in council, or lieutenant governor, may remove any of the commissioners and appoint others, and may fill up vacancies occurring among the commissioners in such manner as may seem to him fit. Act XXVI. 1850, sect. 6.

Preparation of local rules.

Power of government to remove commissioners and to fill up vacancies.

Rules to be prepared.

3175. The rules to be prepared by the said commissioners shall provide, among other things, for those following, that is to say: 1. The appointment and management of all necessary officers and servants of the commissioners, and the salaries to be allowed to them. 2. The definition of the persons or property within the town or suburb to be taxed for raising the moneys necessary for the purposes of this Act, whether by house-assessment, or town-duties, or otherwise; the amount or rate of the taxes to be imposed; the manner of raising and collecting them, and ensuring the safety and due application of them when collected. 3. The manner in which from time to time the rules in force are to be amended or rescinded, and new rules are to be made, with the approval in every case of the governor, or governor in council, or lieutenant governor. 4. The definition and prohibition of nuisances within the town or suburb. 5. The imposition of reasonable penalties for breach of any rule made by the commissioners, not exceeding fifty rupees, or in the case of continuing nuisance not exceeding five rupees for every day that such nuisance is continued. Act XXVI. 1850, sect. 7.

Power of commissioners to make contracts and expend money.

3176. The commissioners appointed from time to time shall have full power to make all necessary contracts for the purposes of this Act, and apply the taxes raised as aforesaid in the necessary works, and in payment of their officers and servants, and in the other expenses incident to the execution of this Act within the said town or suburb. Act XXVI. 1850, sect. 8.

Commissioners not personally liable except for misapplication of money.

3177. No commissioner shall be personally liable for any contract made by the commissioners on behalf of the inhabitants of such town or suburb; but every commissioner shall be liable for any misapplication of the monies collected, to which he shall have been knowingly party or privy, or which shall have happened through gross neglect of his duty, and shall be liable to be sued for the same as for money due to, and at the suit of, the East India Company. Act XXVI. 1850, sect. 9.

Recovery of arrears of taxes and penalties.

3178. The powers of Act II. 1839, for the recovery of fines, shall be applied for the recovery of all arrears of taxes and penalties under this Act; and every magistrate shall put in force the powers of the said Act II. 1839 for that purpose, whenever thereunto required by the commissioners, or any of their officers deputed by them for the purposes of enforcing payment of arrears of taxes imposed under this Act. Act XXVI. 1850, sect. 10.

3179. No rate on property made under this Act shall be invalid for defect of form ; and it shall be enough in any such rate on property, or any assessment of value for the purpose of making such rate, if the property rated or assessed shall be so described as to be generally known ; and it shall not be necessary to name the owner or occupier thereof. Act XXVI. 1850, sect. 11.

Rates not invalid through defect of form ; or if property be described as generally known.

3180. All moveable property found in any house or building, or upon any land, assessed under this Act, may be seized and sold by warrant of a magistrate for payment of any arrear of tax laid on such house, building, or land, under this Act. Act XXVI. 1850, sect. 12.

Moveable property liable to sale for arrears.

3181. All commissioners acting in execution of this Act shall, on or before the last day of April in every year, make up and send to the governor, or governor in council, or lieutenant governor, an account of all works executed by them, and of all sums received and spent by them in the foregoing year, in such form and with such vouchers as the governor, or governor in council, or lieutenant governor, shall from time to time order. Act XXVI. 1850, sect. 13.

Commissioners to render accounts.

3182. The governor, or governor in council, or lieutenant governor, may, at any time, suspend the operation of this Act in any town or suburb, and appoint any person or persons to examine and report upon the behaviour of the commissioners, or any of them, or their officers in the execution of this Act. Act XXVI. 1850, sect. 14.

Government may suspend this Act, and may appoint persons to examine the proceedings.

SECTION V.

OF CHARITABLE DISPENSARIES.

3183. The following are the rules published by the governments of Bengal and the Western Provinces for the management of all charitable dispensaries supported or aided by the government. *Rule 1.* The collector, magistrate, and civil surgeon of the district shall be *ex-officio* members of the local committee of management. *Rule 2.* The government may appoint any other person, whether a public servant or a subscriber to the dispensary, to be a member of the committee. *Rule 3.* The commissioner of the division shall be *ex-officio* a member of the committee, and shall preside at any meeting at which he may be present. He shall have a casting vote, in addition to his own vote, if present, and a casting vote if absent, when opinions are equally divided. *Rule 4.* All correspondence between the government and the local committee shall be conducted through the medium of the commissioner. *Rule 5.* Each committee shall submit to government, through the commissioner, half-yearly returns (made up to June 30th and December 31st in each year) of the number of patients treated, and of receipts and disbursements, in the accompanying forms. These returns are exclusive of the professional reports submitted to the medical board. *Rule 6.* Each committee shall appoint its own secretary, whose duty it shall be to see that proper returns and accounts are kept. *Rule 7.* Each committee

Collector, magistrate and civil surgeon to be *ex-officio* members.

Government may appoint any other person.

Commissioner to be an *ex-officio* member and to preside and have a casting vote.

Correspondence to pass through commissioner.

Half yearly returns of patients and of receipts and disbursements.

Committee to appoint its own secretary.

Committee to keep minutes of proceedings in a book.

In professional matters to be guided by superintending surgeon.

Form of half-yearly return of patients.

shall keep a book, in which are to be entered minutes of all its proceedings and resolutions. The proceedings of each meeting shall be attested by the members present. *Rule 8.* In all matters of a strictly professional description, the committee shall be guided by such instructions as they may receive from the superintending surgeon of the division.

Half-yearly return of patients treated in the charitable dispensary from the to the

	Remaining on the	Admitted.	Total.	Cured.	Relieved.	Incurable.	Died.	Result not known.	Remaining under treatment.
In-door patients,									
Out-door patients,									
Total, ...									

Form of half-yearly cash account.

Half-yearly cash account of the charitable dispensary from the to the

Dr.

Cr.

To balance in hand on the					By amount pay of establishment from				
„ Subscriptions collected from to					„ Amount paid for supplied to the in-patients at				
„ Government donation drawn from the month of up to at rs. per mensem under orders dated the					„ Ditto for half-yearly supply of clothes to the in-patients in list				
„ Interest upon government promissory notes drawn in					„ Ditto ditto paid to two extra native doctors employed in cholera stations in the city,				
&c. &c.					Balance in hand,				
Total, Co.'s Rs.,					Total, Co.'s Rs.,				

Govt. Order *L. P.* October 5, 1853; and *W. P.* No. 2132 A, November 17, 1853.

Monthly report of cases.

3184. Sub-assistant surgeons are required to submit monthly a detailed report of one medical and one surgical case for the information of superintending surgeons through the civil surgeon, who is to certify that the cases as reported are correct transcripts from the original copies entered in the register. Govt. Order *W. P.* No. 2404 A, December 28, 1853.

Superintending surgeon.

3185. Superintending surgeons are *ex-officio* members of the dispensary committees within their several circles in the Western Provinces. Govt. Order *W. P.* No. 2404 A, December 28, 1853.

CHAPTER III.

OF LOCAL NUISANCES.

3186. It is lawful for any magistrate, when the public benefit and comfort are in question, to cause unlawful obstructions and nuisances to be removed from thoroughfares and public places; and to suppress, or cause to be removed to a different place, trades or occupations injurious to the health or comfort of the community; and to prevent such construction of buildings and such disposal of combustible substances, as appear to him likely to occasion conflagration; and to cause the removal of buildings in such state of weakness, as, by the probability of their falling, appear to him to expose individuals to danger. Act XXI. 1841, sect. 1.

Magistrate is empowered to suppress local nuisances.

3187. This enactment is applicable only to cases of unlawful obstruction of public thoroughfares when the public benefit and comfort are in question. In cases where the right of use of any thoroughfare is disputed merely between some private parties, the magistrate should decide the case under sect. 6, Act IV. 1840. Reports *L. P.* 1853, part 1, page 578.

This does not apply to disputes between private parties for right of thoroughfare.

3188. But a magistrate is clearly empowered to remove all obstructions whether absolute or partial on public roads. And there is nothing in the law, which limits the jurisdiction of the magistrate in interfering for the public benefit in regard to any description of land within the district under his charge. Letter of N. A. to Judge of 24-Pergunnahs, No. 246, March 17, 1854.

But empowers the magistrate to remove obstructions from any public road.

3189. In exercising the authority conferred by the above section, the magistrate, after holding such enquiry as satisfies him of the necessity of proceeding under this Act, is to issue an injunction, which, if practicable, is to be served personally on the parties concerned; but if such service is impracticable or very inconvenient, the injunction is to be notified by oral proclamation, and a written notice thereof is to be set up at such place or places as may be best adapted for conveying information to the parties concerned. And in case such injunction is not obeyed, the magistrate may compel observance thereof by force, and punish disobedience by fine not exceeding 200 rupees, or by imprisonment without labor for any period not exceeding one month. And if the magistrate finds it necessary to incur expense in removing noxious or dangerous articles or buildings, it is lawful for him to sell the same or their materials by public auction in order to defray the charge, delivering any surplus that may remain to the owner. And it is lawful for the magistrate to compel, under the like penalty, the owners of tanks or wells, adjacent to any public thoroughfares, to fence the same in such manner as to prevent danger to the public arising therefrom. Act XXI. 1841, sect. 2.

He is to issue an injunction, or proclamation and written notice, to the parties concerned.

Power to compel observance thereof by force, and punishment of disobedience.

Enclosure of wells and tanks.

3190. It is lawful for any person affected by such injunction or written notice as is above described, if he objects thereto, to claim by written petition, to be presented to the magistrate within the period of ten days if reasonably practicable (if not, within the shortest reasonable further time from the receipt of such injunction or the publication of such notice),

Person affected by such order may claim the appointment of a pan-chayat, which is to be nominated by the

magistrate and the claimant.

that a jury or panchayat may be appointed to try and decide the question; and the magistrate is, on receiving such petition, to pass order thereupon for the appointment of a jury or panchayat, which is to consist of not less than five persons, whereof the president and one half of the other members are to be nominated by the magistrate from the residents in the vicinity, and the remaining members are to be nominated by the party petitioning. And the magistrate is to suspend the further execution of the injunction or order pending such enquiry, and to be guided by the decision of the said jury, which is to be according to the opinion of the majority. Provided however that if the petitioner, by neglect or in any other way, prevents the appointment of such jury or panchayat, or if from any cause the jury so appointed does not decide and report within a reasonable time to be fixed in the order for their appointment, their functions are to cease from the date of the expiration of such period, unless they are continued by special order of the magistrate; and if from any of the above causes no decision is made by the jury or panchayat, the magistrate's order is to take effect as if not opposed. Act XXI. 1841, sect. 3.

Magistrate to be guided by the decision of such panchayat. But if they do not decide within prescribed time, his order is to take effect as if unopposed.

Orders of magistrate are subject to appeal,

3191. All the proceedings of magistrates under the authority of this Act, are subject to the like appeal, as other orders of magistrates, according to the regulations. Act XXI. 1841, sect. 4.

to the session judge,

3192. All orders passed by magistrates, under the above provisions, are appealable to the session judges only. C. O. No. 157 of vol. 3.

Oppression to be avoided.

3193. Care must be taken to prevent this Act from operating oppressively toward persons affected by it. C. O. No. 131 of vol. 3. *L. P.*

Act does not extend to limits of supreme court.

3194. This Act is not applicable within the local limits of her majesty's courts of justice. Act XXI. 1841, sect. 5.

Wells, without proprietors, are to be made secure by the magistrate at the public expense.

3195. The local police officers are to ascertain from time to time the state of public wells without proprietors; and are to report to the magistrate whenever they are insecure from the want of a parapet wall or otherwise, with a statement of the expense required to make them secure. If the expense so stated is inconsiderable, and appears on inquiry to be necessary for the purpose of securing a public well, the magistrate is authorized to defray it, and to charge the amount in his monthly contingent bill with the usual explanation. But if the stated expense is in any instance more than 50 rupees, he is to transmit the police officer's report with his sentiments upon it to the superintendent of police, in conformity with the rule of sect. 17, Reg. XVII. 1816.* C. O. No. 191 of vol. 1.

* *n. para.* 3120 *et seq.*

Killing dogs, when rewards may be given for.

3196. Under the orders of government, no rewards are to be given for killing dogs, except, and subject to the sanction of the superintendent of police, on particular occasions, or when they become rabid, or serious apprehensions are otherwise entertained. C. O. Sup. Pol. *L. P.* No. 10 of 1839.

Magistrates to punish persons committing malicious injuries on public property.

3197. Magistrates are to take all the means in their power to trace out and punish persons committing malicious injuries on public property,—such as the removal of mile stones, stealth of flag stones from surface drains, destruction of bridges, and the cutting through of roads or embankments. C. O. Sup. Pol. *L. P.* No. 5 of 1841.

3198. Whoever wilfully obstructs any duly authorized person in removing or leveling any embankment, house, hut, or other building, shall be liable to be imprisoned for any time not exceeding six months, with or without labor, at the discretion of the magistrate, or to fine not exceeding two hundred rupees, commutable, if not paid, to a period of imprisonment not exceeding six months, or to both. Act XXXII. 1855, sect. 15. *L. P.*

Embankments. L. P.

Penalty for obstructing officer or person in discharge of duty.

3199. Whoever wilfully, and without due authority, cuts through, or attempts to cut through, any embankment, whether public or private, or destroys, or attempts to destroy, any such embankment, or opens any sluice or water-course in any such embankment, shall be liable, on conviction before a magistrate, to be imprisoned for a term not exceeding one year, with or without labor, or to a fine not exceeding two hundred rupees commutable, if not paid, to a period of imprisonment not exceeding one year, or to both; or, if the magistrate be of opinion that such punishment is insufficient for the offence, he may commit the offender to the sessions court, in which case he shall be liable, on conviction, to imprisonment for a period not exceeding seven years, with or without labor, or to fine, or to both. Act XXXII. 1855, sect. 16. *L. P.*

Penalty for wilful damage to embankment by cutting, &c.

3200. Whoever damages any public embankment by making any dam or other obstruction for the purpose of diverting or opposing the current of an embanked river, without the permission of the officer in immediate charge of the embankments; or by refusing or neglecting to remove any such dam or obstruction at the proper season; or by cutting or otherwise altering the banks of any embanked river; or by removing the earth from such embankment; or by grazing or tethering any cattle or other animals on any such embankment; or by driving stakes into, or cutting or rooting out grass growing on, such embankment; or by any other wilful act destroys or diminishes the efficiency of such embankment; shall be liable, on conviction before a magistrate, to simple imprisonment for a term not exceeding six months, or to a fine not exceeding two hundred rupees, or to both. Act XXXII. 1855, sect. 17. *L. P.*

Penalty for other wilful damage.

3201. Any deputy or assistant magistrate may take cognizance of offences under this Act, and may punish offenders to the extent of the power conferred upon him by the regulations of the Bengal code, and by the Acts of the governor general of India in council, with respect to the punishment of misdemeanors. Act XXXII. 1855, sect. 18. *L. P.*

Jurisdiction of deputy or assistant magistrate under this Act.

3202. The provisions of section 13, Reg. XX. 1817 shall extend to any charge or information of the offences specified in section 16 of this Act; and darogahs and other police officers shall enquire into such offences in the mode and subject to the provisions therein prescribed. Act XXXII. 1855, sect. 19. *L. P.*

Provisions of section 13, Reg. XX. 1817 extended to this Act.

3203. All sentences and orders passed by a magistrate, deputy magistrate, or assistant, under this Act, shall be appealable, subject to the general provisions which regulate appeals. Act XXXII. 1855, sect. 20. *L. P.*

Right of appeal.

3204. Should any person be guilty of the offence of making cuts through any of the embankments maintained at the expense of government in any other manner than that prescribed [*i. e.* by an application through the native officer in immediate charge to the

W. P.

Persons guilty of cutting through embankments be-

longing to government are liable to what penalties.

superintendent of the embankments], he is liable to be prosecuted criminally before the magistrate for such misdemeanor; who is to decide on the case, or to refer it to the sessions court, according to the extent of the injury done by the offender, and the punishment to which the magistrate considers him liable. Any person so offending is likewise liable to be prosecuted in the civil court for damages by any person or persons, who have sustained any loss or injury from the improper opening of the embankments. Reg. VI. 1806, sect. 12, cls. 6 and 7. *W. P.*

So, persons cutting through private embankments.

3205. The foregoing rule is applicable to the embankments repaired by the zumeendars and farmers, with this difference, that when any person is desirous that water-courses should be made through any part of such embankments, he is to apply to the zumeendar or farmer, or to the officers employed by him in superintending the repair of the embankments, from whose decision he may appeal to the officer in charge of the government embankments. Any person infringing this rule is subject to the penalties stated above, and to a civil action for damages at the suit of any individual as above mentioned. Reg. VI. 1806, sect. 13. *W. P.*

Rivers.

No bandels are allowed in navigable rivers.

Punishment of persons replacing any bandels, &c. removed by the supervisor, or fixing them within certain limits in opposition to his orders.

Further punishment if the offender has used violence, or been guilty of any breach of the peace.

3206. No bandels, or contrivances for fishing, or for any other purposes, which may tend to obstruct the free navigation of the Bhagiratthi, Jellinghi, Issamutti, Mata-bhanga, and Choorni rivers, or other navigable rivers and streams, for the supervision of which the government deems it necessary to provide, are to be allowed or permitted. Whenever the supervisor of rivers, with the approval of the board of revenue or other controlling authority, has removed any bandel or other contrivance for fishing, which has been fixed or sunk at any place in the said rivers to the obstruction of navigation; or has prohibited the fixing or sinking of any obstruction within any specified limits; then, if any person replaces the bandels or other contrivances removed as aforesaid, or sinks or fixes any such in opposition to the prohibition of the supervisor, the bandels or other contrivances for fishing so replaced, or fixed, or sunk, are to be destroyed; and the party offending is liable to such punishment not exceeding a fine of 50 rupees, or in default of payment imprisonment without irons in the debtor's jail for one month, as the magistrate of the district may judge adequate to the offence; provided, however, that if the offender has used violence, or been guilty of any breach of the peace, he is, on conviction, besides any further punishment to which he is subject under the general laws and regulations, liable to imprisonment in the criminal jail with hard labor for a period not exceeding 3 months, and is to be required, at the discretion of the magistrate, to furnish adequate security for keeping the peace. Reg. VIII. 1824, sect. 10.

Punishment of persons preventing the collector or supervisor, or any of their officers, from fulfilling their duties, or forcibly resisting them in the execution thereof.

* *r. para. 1726 et seq.*

3207. Any person who by force or threats prevents the collector of tolls, supervisor of rivers, or any of his or their officers from fulfilling the duties assigned to them by this regulation, or who forcibly resists them in the execution of those duties, or who advises or encourages such resistance, is liable, on conviction before the foudaree court of the district, to the penalties prescribed for the offence of resisting the process of a magistrate.* Parties so offending are further liable, in the event of an affray or other breach of the peace occurring in consequence of their resistance, to be punished under the general rules applicable to such cases. Reg. VIII. 1824, sect. 11, cl. 1.

3208. If the collector, supervisor, or other officer aforesaid, has in any case reason to apprehend forcible resistance, he is to apply to the nearest darogah to aid him in the execution of his duty; and all darogahs, or other officers in charge of thanas or chokees, are on such requisition being made, or its appearing to be otherwise necessary, immediately to afford the requisite assistance, under pain of dismissal from office and such fine, not exceeding 200 rupees, as the magistrate may adjudge, commutable, if not paid, to imprisonment in the dewanny jail for a period not exceeding 3 months. Provided also that if any zumeendar, talookdar, or other proprietor or farmer of land, or the naib, gomashlah, or other local agent of such proprietor or farmer, wilfully permits any one to resist the collector, supervisor, or other officers aforesaid, within the village or lands occupied or managed by him, he is liable, on conviction before the magistrate, to a fine not exceeding 200 rupees commutable as aforesaid. Reg. VIII. 1824, sect. 11, cl. 2.

Collector supervisor, &c. how to proceed if forcible resistance is apprehended.

Punishment of police officers not giving assistance.

Punishment of land holder permitting such resistance within his estate.

3209. The collector, supervisor, and their native officers duly authorized by them, are authorized to arrest and deliver over to the nearest police darogah, or other police officer authorized to receive criminal complaints, any person or persons guilty of any of the offences stated in the two preceding sections, for the purpose of their being forwarded to the magistrate; and all police officers aforesaid are required, subject to the provisions hereinafter specified, to receive and safely to forward to the magistrate of the jurisdiction, within 24 hours, all offenders so delivered over. Provided always that the supervisor or his officers give at the same time a written requisition to that effect, duly attested and dated, specifying the name of the offender and the nature of the offence, and engaging that a full report shall be transmitted to the magistrate, and that all other necessary measures for the conduct of the prosecution shall be taken within ten days from the date on which the offender or offenders have been apprehended. Provided also that in such cases, if the party accused tenders sufficient bail for appearance before the magistrate, and has not been guilty of any offence which by the general regulations is not bailable, the darogah or other officer aforesaid is to accept the bail and release the party. Reg. VIII. 1824, sect. 12.

Collector, supervisor, &c. empowered to apprehend, and make over to the police officers such offenders, together with a written charge; and the police officer is to forward them to the magistrate within 24 hours, but may accept bail.

3210. No person is to be detained in custody by a magistrate under the above provision beyond the period of ten days, if during that period the supervisor has not preferred his complaint, and pursued the necessary measures for the furtherance of the prosecution in the prescribed manner. Reg. VIII. 1824, sect. 13.

Magistrate is to discharge such persons, if the complaint is not preferred within 10 days.

3211. The supervisor is entitled to direct the vakeel of government to conduct all criminal prosecutions instituted by him under the provisions of this regulation; and the collectors of revenue are authorized to supply the vakeel of government on application from the supervisor with the stamp paper, which is required for the purposes aforesaid. Reg. VIII. 1824, sect. 15.

Supervisor may employ the government vakeel in such cases; and the collector is to supply stamp paper.

3212. The rules contained in the first seven sections of Reg. I. 1824 [regarding the appropriation of land, &c., for public purposes; repealed by Act VI. 1857] are not to be held applicable to the removal from the bed or banks of navigable rivers, or streams, of trees, broken boats, timbers, or the like, which may obstruct, or be likely to obstruct the navigation of such rivers and streams. Such obstructions may be summarily removed

Magistrate may summarily remove obstructions from the bed or banks of navigable rivers or streams;

by the magistrate, or by such other officer or officers as the government may vest with the superintendence of any such river or stream, under the laws and usages applicable to the removal of nuisances, and such special provisions as may hereafter be enacted. Reg. I. 1824, sect. 8.

and any obstructions which appear to interfere with the navigation of such rivers, or with the passage of boats by tracking.

3213. Nothing in Reg. XI. 1825 [regarding claims to land gained by alluvion] is to be construed to justify any encroachments by individuals on the beds or channels of navigable rivers; or to prevent magistrates, or other officers of government who may be duly empowered for that purpose, from removing obstacles which appear to interfere with the safe and customary navigation of such rivers, or which may in any respect obstruct the passage of boats by tracking on the banks of such rivers or otherwise. Reg. XI. 1825, sect. 5.

Canals

Lieutenant governor *H. P.* may make rules.

3214. The lieutenant governor of the North Western provinces is competent to draw out rules to regulate the levy of water-rent; and the supply of water for irrigation; and the payment of tolls and dues on boats, rafts, or floats; and admission to the benefits of navigation; on canals to which the provisions of this Act have been made applicable, as may be found most suitable to the peculiar circumstances of each. The rules thus drawn out are to be published for general information in the government gazette. Act VII. 1845, sect. 2. *W. P.*

Contravention of such how punishable.

3215. Any acts done by private individuals in contravention of the rules so published, are punishable either by temporary deprivation of the benefits of the canal, or by the penalties hereinafter described. Act VII. 1845, sect. 3. *W. P.*

Obstructions to canal, damaging banks or works, or ditching the water, punishable by

3216. Whoever wilfully causes any obstruction to any canal, to which the provisions of this Act have been made applicable, or to any of the water-courses drawn and supplied therefrom, or damages the banks of the canal or the works constructed for its maintenance, or wilfully defiles the water in the canal, is liable to the penalties hereinafter described. Act VII. 1845, sect. 5. *W. P.*

Fine, or imprisonment, or both.

3217. All persons offending against the provisions of this Act, or of the rules passed under this Act, are punishable on conviction before the magistrate by imprisonment without labor for a term not exceeding fourteen days, or fine to an amount not exceeding fifty rupees, or both; and in default of payment of such fine, by additional imprisonment for fourteen days. Act VII. 1845, sect. 6. *W. P.*

Mode of procedure in such cases, and record.

3218. The mode of procedure, prescribed in criminal trials by the general regulations, is applicable to trials held under sect. 6, Act VII. 1845, for breaches of the canal rules. The records of all cases, disposed of under the enactment by officers invested, under sect. 8 thereof, with the powers of joint magistrate, are to be sent by them respectively, at the end of each month, to the magistrate of the zillah, within which their jurisdiction lies, who is to place them among the records of his court, and enter the cases in his periodical returns under the heading of "canal laws, breach of," which is to be introduced into the schedule of miscellaneous offences, published with C. O. Nos. 36 and 71 of vol. 4, in its appropriate place under letter C. C. O. No. 101 of vol. 4. *W. P.*

CHAPTER IV.

OF MARRIAGES.

3219. Whereas by an Act passed in the session of parliament holden in the fourteenth and fifteenth years of the reign of her present majesty, entitled, “an Act for marriages in India,” it was enacted (among other things) that it should be lawful for the governor general of India in council from time to time, by laws and regulations (not inconsistent with the provisions of the said Act of parliament), to be made in the manner, and subject to the provisions, by law required in respect of laws and regulations made by the said governor general of India in council, to provide for the inspection and publication of notices of marriage given under the said Act of parliament, for the custody and protection from injury of marriage register books, for appeals from and references in case of doubt by the marriage registrars in relation to marriages forbidden or protests entered under the said Act of parliament, for fixing the hours between which marriages might be solemnized under the said Act of parliament, for appointing the officers to whom certificates were to be transmitted by the marriage registrars, and generally for giving effect to the provisions of the said Act of parliament: it is hereby enacted as follows. Act V. 1852, preamble.

Preamble.

3220. In every case of marriage intended to be solemnized in India, under the provisions of the said Act of parliament, one of the parties shall give notice in writing, in the form of schedule A(a) to this Act annexed, or to the like effect, to any marriage

Form of notice and length of residence necessary.

(a)

SCHEDULE A.

NOTICE OF MARRIAGE.

To *Mr. John Cox*, a registrar of the district of *Calcutta* in *Bengal*.

I hereby give you notice, that a marriage is intended to be had, within three calendar months from the date hereof, between me and the other party herein named and described.

Name.	Condition.	Rank or profession.	Age.	Dwelling place.	Length of residence.	Church, chapel, place of worship, or building in which marriage is to be solemnized.	District in which the other party resides when the parties dwell in different districts.
<i>James Smith, ...</i>	<i>Widower,</i>	<i>Carpenter,</i>	<i>Of full age,</i>	<i>16 Clive street, ...</i>	<i>23 Days, ...</i>	<i>Union Chapel, Dhurrumtollah.</i>	
<i>Martha Green, ...</i>	<i>Spinster, ...</i>	<i>.....</i>	<i>Minor,</i>	<i>20 Haslings' street,</i>	<i>More than a month, ...</i>		

Witness my hand this *sixth* day of *May*, one thousand eight hundred and *fifty-two*.

(Signed) *James Smith.*

(The *Italics* in this Schedule to be filled up as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another district.)

registrar of the district within which the parties shall have dwelt for not less than five days then next preceding, or, if the parties dwell in different districts, shall give the like notice to a marriage registrar of each district; and shall state therein the name, and surname, and the profession, or condition of each of the parties intending marriage, the dwelling-place of each of them, and the time, not being less than five days, during which each has dwelt therein, and the church, chapel, or other building in which the marriage is to be solemnized; provided that if either party shall have dwelt in the place stated in the notice during more than one calendar month, it may be stated therein that he or she hath dwelt there one month and upwards. Act V. 1852, sect. 1.

Inspection of notices.

3221. The marriage registrar shall file all such notices, and keep them with the records of his office, and shall also forthwith enter a true copy of all such notices fairly into a book, to be for that purpose furnished to him by the government, to be called the "marriage notice book;" and the marriage notice book shall be open, at all reasonable times, without fee, to all persons desirous of inspecting the same. Act V. 1852, sect. 2.

Publication of notices.

3222. The marriage registrars, or registrar, of all districts in the British territories in India, shall respectively publish all such notices of marriage given in their respective districts by causing a copy of such notices to be affixed in some conspicuous place in their respective offices, or, where such registrars are ministers of the Christian religion, ordained or otherwise set apart to the ministry of the Christian religion, such notices shall be affixed in some conspicuous place in the church or chapel or place of worship in which such ministers respectively officiate. When one of the parties intending marriage (not being a widow or widower) is under twenty-one years of age, every marriage registrar shall, within twenty-four hours after the receipt by him of the notice of such marriage, send, or cause to be sent, by the post or otherwise, a copy of such notice to all the other marriage registrars (if any) in the same district, who shall likewise affix the same in some conspicuous place in their own offices or chapels as aforesaid. Act V. 1852, sect. 3.

Suspension of certificate in the case of minors.

3223. Where, by the oath or declaration required by the sixth section of the said Act of parliament, it appears that one of the parties intending marriage (not being a widow or widower) is under twenty-one years of age, the marriage registrar shall not issue his certificate under the provisions of the second section of the said Act of parliament until the expiration of fourteen days after the entry of such notice of marriage. Act V. 1852, sect. 4.

Supreme court may order registrar to issue his certificate in less than fourteen days.

3224. When one of the parties intending marriage (not being a widow or widower) is under twenty-one years of age, and both parties intending marriage are at the time resident in any of the towns of Calcutta, Madras, or Bombay, and are desirous of being married in less than fourteen days after the entry of such notice as aforesaid, it shall be competent for both parties intending marriage to apply by petition to the supreme court of such town, or any judge thereof, for an order upon the marriage registrar to whom the notice of marriage has been given, directing him to issue his certificate at some time before the expiration of the said fourteen days required by section 4 of this Act. And it shall be competent to the said supreme court, or any judge thereof, on sufficient cause being

shown, in their or his discretion, to make an order upon such marriage registrar, directing him to issue his certificate, at any time to be mentioned in the said order, before the expiration of the said fourteen days required by section 4; and the said marriage registrar, on receipt of the said order, shall proceed to issue his certificate in accordance therewith. Act V. 1852, sect. 5.

3225. The certificate to be issued by the marriage registrar, under the provisions of the second section of the said Act of parliament, may be in the form of schedule B (*b*) to this Act annexed, or to the like effect, and the government of each presidency or place shall furnish to every marriage registrar a sufficient number of forms of certificate. Act V. 1852, sect. 6.

Form of certificate.

3226. When any native Christian about to be married, applies for or tenders a notice of marriage, or applies for a certificate from a marriage registrar, such marriage registrar shall ascertain whether the said native Christian understands the English language; and, if he does not, the said marriage registrar shall translate such notice or certificate, or both of them, as the case may be, or shall cause the same to be translated to such native Christian, in the language of such native Christian, or the said marriage registrar shall otherwise ascertain whether such native Christian is cognizant of the purport and effect of the said notice and certificate. Act V. 1852, sect. 7.

Notice and certificate to be translated to native Christians.

(*b*)

SCHEDULE B.

REGISTRAR'S CERTIFICATE.

I, *John Cox*, a registrar of the district of *Calcutta* in *Bengal*, do hereby certify, that on the *6th* day of *May*, notice was duly entered in my marriage notice book of the said district of the marriage intended between the parties therein named and described, delivered under the hand of *James Smith* one of the parties, (that is to say,)

Name.	Condition.	Rank or profession.	Age.	Dwelling place.	Length of residence.	Church, chapel, place of worship, or building in which the marriage is to be solemnized.	District in which the other party dwells, when the parties dwell in different districts.
<i>James Smith,...</i>	<i>Widower,</i>	<i>Carpenter,</i>	<i>Of full age,....</i>	<i>16 Clive street,...</i>	<i>23 Days,...</i>	<i>Union Chapel, Dhurrumtollah.</i>	
<i>Martha Green,</i>	<i>Spinster,...</i>	<i>.....</i>	<i>Minor,</i>	<i>20 Hastings street,...</i>	<i>More than a month,</i>		

Date of notice entered *6th May 1852.*

Date of certificate given *20th May 1852.*

} The issue of this certificate has not been forbidden by any person authorized to forbid the issue thereof.

Witness my hand this *twentieth* day of *May*, *one thousand eight hundred and fifty-two.*

(Signed) *John Cox*, Registrar.

This certificate will be void unless the marriage is solemnized on or before the *6th* day of *August 1852.*

(The *Italics* in the schedule to be filled up as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another district.)

How issue of
certificate may be
forbidden.

3227. Any person authorized in that behalf may forbid the issue of the marriage registrar's certificate, by writing, at any time before the issue of such certificate, the word "forbidden" opposite to the entry of the notice of such intended marriage in the marriage notice book, and by subscribing thereto his or her name and place of abode, and his or her character in respect of either of the parties, by reason of which he or she is so authorized; and the said word "forbidden," so written and subscribed as aforesaid, shall be deemed a protest, within the meaning of the seventh section of the said Act of parliament. Act V. 1852, sect. 8.

References by the
registrars in cases
of doubt.

3228. In all cases where a marriage registrar, acting under the provisions of the fourth section of the said Act of parliament, shall not be satisfied that the person forbidding the issue of the certificate is authorized by law so to do; the said marriage registrar shall apply by petition (which may in all cases be on unstamped paper), where the district of such registrar is within any of the towns of Calcutta, Madras, and Bombay, to the supreme court of judicature in the presidency or place within which such district is comprised; or if such district be not within any of the said towns, then to the judge of the zillah or district within which the same is comprised; and the said petition shall state all the circumstances of the case, and pray for the order and direction of the court concerning the same; and the said supreme court, or any judge thereof, or such judge of the zillah or district, shall be empowered to examine into the allegations of the petition and the circumstances of the case in a summary way; and if upon such examination it shall appear that the person forbidding the issue of such certificate is not authorized by law so to do, such supreme court, or any judge thereof, or such judge of the zillah or district, shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid, and that then and in such case such certificate shall be issued, and the like proceedings may be had under the said Act of parliament in relation to such marriage as if the issue of such certificate had not been forbidden by such person. And in all cases where a marriage registrar, appointed to act within the territories of any native prince or state in alliance with the East India Company acting under the provisions of the sixth section of the said Act of parliament, shall not be satisfied that the person forbidding the issue of the certificate is not authorized by law so to do, the said marriage registrar shall transmit a statement of all the circumstances of the case, together with all documents and papers relating thereto, to the governor general of India in council, and if it shall appear to the said governor general of India in council that the person forbidding the issue of such certificate is not authorized by law so to do, the said governor general of India in council shall declare that the party forbidding the issue of such certificate is not authorized as aforesaid, and that then and in such case such certificate shall be issued, and the like proceedings may be had under the said Act of parliament in relation to such marriage, as if the issue of such certificate had not been forbidden by such person. Act V. 1852, sect. 9.

Appeal where
registrar in allied
native state refuses
certificate.

3229. In all cases whatsoever where a marriage registrar resident in the territories of any native prince or state in alliance with the East India Company has refused to issue his certificate, it shall be lawful for either of the parties intending marriage to apply by petition

to the governor general of India in council, and the said governor general of India in council shall be empowered to examine the allegations of the petition in a summary way, and shall decide thereon, and the decision of the said governor general of India in council shall be final, and the marriage registrar, to whom the application was originally made, shall proceed in accordance therewith. Act V. 1852, sect. 10.

3230. Every marriage solemnized under the provisions of the said Act of parliament shall be so solemnized between the hours of six in the morning and seven in the evening. Act V. 1852, sect. 11. Hours for marriages.

3231. When any native Christian is married under the provisions of the said Act of parliament, the party solemnizing the said marriage shall ascertain whether such native Christian understands the English language; and, if he does not, the party solemnizing the said marriage shall, at the time of the solemnization thereof, translate, or cause to be translated, to such native Christian, in the language of such native Christian, both the declarations made at such marriage in pursuance of section 9 of the said Act of parliament. Act V. 1852, sect. 12. Declarations made at the marriage to be translated to native Christians.

3232. After any marriage has been solemnized under the said Act of parliament, it shall not be necessary, in support of such marriage, to give any proof in respect of the notice of marriage, or the certificate, or the translation thereof respectively, or in respect of the hours between which any marriage may be solemnized, or in respect to the said translations of the said declarations in section 9 of the said Act of parliament contained, nor shall any evidence be given to prove the contrary, in any suit touching the validity of such marriage. Act V. 1852, sect. 13. Proof as to notice, certificate, or hours of marriage, &c., not necessary to establish marriage.

3233. Every marriage registrar who shall knowingly and wilfully issue any certificate for marriage after the expiration of three calendar months after the notice shall have been entered by him as aforesaid; or who shall knowingly and wilfully issue, without the order of a competent court authorizing him so to do, any certificate for marriage, where one of the parties intending marriage (not being a widower or widow) is under twenty-one years of age, before the expiration of fourteen days after the entry of such notice; or any certificate the issue of which shall have been forbidden as aforesaid by any person authorized to forbid the issue thereof; shall be guilty of felony. And every person who shall knowingly and wilfully solemnize any marriage under the provisions of the said Act of parliament in the absence of a registrar of the district in which such marriage is solemnized; or who shall knowingly and wilfully solemnize any marriage, where one of the parties to such marriage (not being a widower or widow) is under twenty-one years of age, within fourteen days after the entry of the notice of marriage, no order for the issue of a certificate in less than fourteen days having been made by a competent court; shall be guilty of felony. Act V. 1852, sect. 14. Penalties.

3234. The marriage registrars in the territories of any native prince or state in alliance with the East India Company, shall transmit the certificates mentioned and referred to in the twelfth section of the said Act of parliament to the secretary for the foreign department of the government of India. Act V. 1852, sect. 15. Certificate of marriages in allied native states to be transmitted to secretary, &c.

Punishment for making false oath or declaration.

3235. Every person who shall knowingly and wilfully make any false oath or declaration, or sign any false notice or certificate, required by the said Act of parliament or this Act, for the purpose of procuring any marriage; and every person who shall forbid the issue of a marriage registrar's certificate, by falsely representing himself or herself to be a person whose consent to such marriage is required by law, knowing such representation to be false; shall, on conviction, suffer the penalties of perjury. Act V. 1852, sect. 16.

Limitation of prosecution.

3236. Every prosecution under this Act shall be commenced within the space of two years after the offence committed. Act V. 1852, sect. 17

Appointment of registrars in allied native states, and as to their fees.

3237. The governor general of India in council may appoint any covenanted or uncovenanted servant of the Company being a Christian, or any minister of the Christian religion, ordained, or otherwise set apart to the ministry of the Christian religion, according to the usage of the persuasion to which he may belong, to be a marriage registrar in any district, to be assigned by the governor general of India in council in any place within the territories of any native prince or state in alliance with the East India Company. And the said marriage registrar shall be entitled to receive the following fees; that is to say, for receiving each notice of marriage one rupee, for publishing each notice of marriage two rupees, for the issuing of each certificate five rupees, for every marriage forbidden or protest entered ten rupees, and for registering each marriage three rupees; and all such fees shall be accounted for and paid over by the marriage registrar to the government treasury as in the said Act of parliament mentioned. Provided always, that in any case in which it shall appear to the satisfaction of the marriage registrar, that the parties intending marriage, or married, under the provisions of the said Act of parliament, are in indigent circumstances, it shall and may be lawful for the said marriage registrar, in his discretion, to remit some part, but not more than three-fourths, of the said fees respectively; and in each and every such case of remission of fees, the marriage registrar shall report the circumstances thereof, and the grounds on which the remission is made, for the information of the governor general of India in council. Act V. 1852, sect. 18.

Salaries of registrars.

3238. It shall be lawful for the government of each presidency or place to pay any one marriage registrar of Calcutta, Madras and Bombay, or of any other district where a considerable number of persons likely to avail themselves of this Act are resident, such salary as they shall think fit, not exceeding the sum of rupees fifty per month. Act V. 1842, sect. 19.

Provision in case of illness, &c., of marriage registrar.

3239. When there is only one marriage registrar in a district, and such registrar is absent from such district, or ill, or in case of the death of the only marriage registrar in a district, or of any temporary vacancy in such office, the magistrate of such district shall act as, and be, marriage registrar thereof, during such absence, illness, or temporary vacancy as aforesaid. Act V. 1852, sect. 20.

Searches may be made and certificates given.

3240. Every marriage registrar, or other person who shall have the custody for the time being of the register of marriages under this Act, shall at all reasonable times allow searches to be made of any register book in his custody, and shall give a copy, certified under his hand, of any entry or entries in the same, on the payment of the fees hereinafter

mentioned (that is to say), for every search extending over a period of not more than one year the sum of one rupee, and four annas additional for every additional year, and the sum of one rupee for every single certificate, and all such fees shall be accounted for and paid over by the marriage registrar to the government treasury. Act V. 1852, sect. 21.

3241. Every person who shall wilfully destroy or injure, or cause to be destroyed or injured, any such register book, or the counterfoil certificates thereof, or any part or certified copy thereof; or shall falsely make or counterfeit, or cause to be falsely made or counterfeited, any part of such register book, or of such counterfoil certificates, or of certified copies thereof; or shall wilfully insert or cause to be inserted in any register book, or counterfoil copy or certified copy thereof, any false entry of any marriage; or shall wilfully give any false certificate; or shall certify any writing to be a copy or extract of any register book, or counterfoil copy thereof, knowing the same register book or counterfoil copy to be false in any part thereof; shall be guilty of felony. Act V. 1852, sect. 22.

Penalty for destroying or falsifying register book, &c.

3242. Any person charged with the duty of registering any marriage, who shall discover any error to have been committed in the form or substance of any such entry, may, within one calendar month next after the discovery of such error, in the presence of the parties married, or, in case of their death or absence, in the presence of two other credible witnesses, who shall respectively attest the same, correct the erroneous entry according to the truth of the case, by entry in the margin without any alteration of the original entry, and shall sign the marginal entry, and add thereunto the day of the month and year when such correction shall be made; and he shall make the like marginal entry, attested in the like manner, in the counterfoil certificate thereof, to be made by him as in the said Act of parliament mentioned; and in case such counterfoil certificate shall have been already transmitted to the secretary of government of the presidency or place within which he resides, he shall make and transmit in like manner a separate counterfoil certificate of the original erroneous entry, and of the marginal correction therein made. Act V. 1852, sect. 23.

Accidental errors may be corrected.

3243. Nothing in this Act contained shall be construed to extend to the registration of marriages which may be solemnized in India by persons in holy orders, or under the provisions of the Act of the 58th year of King George the Third, chapter 84; or to the registration of any marriage solemnized between any two persons professing the Jewish religion; and nothing herein contained shall affect the right of any officiating minister to receive the fees now usually paid for the performance or registration of any marriage. Act V. 1852, sect. 24.

Certain registers of marriage may be kept as heretofore.

3244. All petitions presented in pursuance of section 5 of the said Act of parliament, may be so presented on unstamped paper. Act V. 1852, sect. 25.

Petitions to be on unstamped paper.

3245. If a Hindu widow re-marrying is a minor whose marriage has not been consummated, she shall not re-marry without the consent of her father; or, if she has no father, of her paternal grand-father; or, if she has no such grand-father, of her mother; or, failing all these, of her elder brother; or, failing also brothers, of her next male relative. All persons knowingly abetting a marriage made contrary to the provisions of this section shall be liable to imprisonment for any term not exceeding one year, or to fine, or both. Act XV. 1856, sect. 7.

Punishment for abetting re-marriage of Hindu widow, a minor, and whose first marriage was not consummated, without consent.

NOTE.

An Act for marriages in India.

14 and 15 Vict. Cap. 40.

24th July 1851.

Whereas it is expedient to amend the law of marriages in India: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Marriage of Christians in India may be solemnized under this Act.

Notice of intended marriage to be the marriage registrar for the district.

Certificate of notice to be issued on request.

Proviso.

Who to give consent if parties under age.

Issue of registrar's certificate may be forbidden.

Supreme court or judge of the zillah or district may relieve where consent improperly withheld.

I. In every case of marriage intended to be solemnized in India after the commencement of this Act where one or both of the parties is or are a person or persons professing the Christian religion, such marriage may be solemnized under the provisions of this Act; and, where such marriage is intended to be so solemnized, one of the parties shall give notice in writing to the marriage registrar to be appointed under the provisions of this Act for the district, within which the parties shall have dwelt for such period then next preceding as by such laws or regulations as are hereinafter mentioned may be required, or, if the parties dwell in the districts of different marriage registrars, shall give the like notice to the marriage registrar for each district: and every such notice shall be in such form and contain such particulars as may be prescribed by such laws or regulations, and shall be open for inspection and published as by such laws or regulations may be provided.

II. The marriage registrar, upon being requested so to do by or on behalf of the party by whom the notice was given, and one of the parties intending marriage having made oath or declaration as hereinafter required, shall issue under his hand a certificate of such notice having been given, and of such oath or declaration having been made; provided no lawful impediment according to the law of England be shown to the satisfaction of the marriage registrar why such certificate should not issue, and the issue of such certificate have not been sooner forbidden, in manner hereinafter mentioned, by any person or persons by this Act authorized in that behalf: provided always, that where by such oath or declaration it appears that one of the parties intending marriage (not being a widower or widow) is under twenty-one years of age, the marriage registrar shall not issue such certificate until the expiration of such period after the giving of such notice as may be in this behalf provided by such laws or regulations as are hereinafter mentioned.

III. The father, if living, of any party under twenty-one years of age, such party not being a widower or widow; or, if the father be dead, the guardian or guardians of the person of the party so under age lawfully appointed, or one of them; and, in case there be no such guardian, then the mother of such party, if unmarried; shall have authority to give consent to the marriage of such party: and such consent is hereby required for the marriage of such party so under age, unless there be no person authorized to give such consent resident in India.

IV. Every person, whose consent to a marriage is required as aforesaid, is hereby authorized to forbid, in such manner as may be provided by such laws or regulations as are hereinafter mentioned, the issue of the marriage registrar's certificate; and, in case the issue of any such certificate be so forbidden, the notice and all proceedings thereupon shall be utterly void: provided always, that (subject to such laws and regulations) if either of the parties intending marriage allege that the person forbidding the issue of such certificate is not authorized by law so to do, the marriage registrar shall examine into such allegation; and, if he be satisfied that such person is not authorized as aforesaid, shall act in like manner, and the like proceedings may be had under this Act in relation to such marriage, as if the issue of such certificate had not been forbidden by such person.

V. If any person, whose consent is necessary to any marriage under this Act, shall be *non compos mentis*, or if any such person (other than the father) shall, without just cause, withhold his or her consent to a marriage, the parties intending marriage may apply by petition, where the person whose consent is necessary is resident within any of the towns of Calcutta, Madras, and Bombay, to the supreme court of judicature established by royal charter in the presidency or place in which such person is resident; or, if

such person be not resident within any of the said towns, then to the judge of the zillah or like district within which such person is resident; or to such other person as may for this purpose be appointed under the laws or regulations hereinafter mentioned: and the said supreme court, or any judge thereof, or such judge of the zillah or district, or such other person, shall be empowered to examine the allegations of the petition in a summary way; and, if upon such examination such marriage appear proper, such supreme court, or any judge thereof, or such judge of the zillah or district, or such other person, shall declare the same to be so, and such declaration shall be as good and effectual as if the person whose consent was needed had consented to the marriage: and, in case such person has forbidden the issue of the marriage registrar's certificate, such certificate shall be issued, and the like proceedings may be had under this Act in relation to the marriage, as if the issue of such certificate had not been forbidden by such person, anything hereinbefore contained to the contrary notwithstanding.

VI. Before any such certificate as aforesaid shall be issued by any marriage registrar, one of the parties intending marriage shall appear personally before such marriage registrar, and shall make oath, or shall make his or her solemn declaration instead of an oath, that he or she believeth that there is not any impediment of kindred or affinity or other lawful hindrance to the said marriage, and that both the parties to the intended marriage have, or (where the parties have dwelt in the districts of different marriage registrars) that the party making such oath or declaration hath, for the period required by such laws or regulations as are hereinafter mentioned, had their, his, or her, usual place of abode within the district of such marriage registrar; and, where either or each of the parties, not being a widower or widow, is under the age of twenty-one years, that the consent of the person or persons, whose consent to such marriage is required by law, has been obtained thereto, or that there is no person resident within the territories under the government of the East India Company having authority to give such consent, as the case may be: provided always, that where under the foregoing provision the said supreme court, or a judge thereof, or such judge of the zillah or like district, or such other person as aforesaid, declares the marriage to be proper, it shall not be necessary to make oath or declare that such consent has been obtained to such marriage.

Oath or declaration to be made before issue of certificate.

VII. Any person may, in manner provided by such laws or regulations, enter a protest with the marriage registrar against the issue of a certificate for the marriage of any person named therein; and, if any protest be so entered, no certificate shall issue until the marriage registrar shall have examined into the matter of the protest, and is satisfied that it ought not to obstruct the issue of certificate for the said marriage, or until the protest be withdrawn by the party who entered the same.

Protest against issue of certificate may be entered.

VIII. In all cases whatsoever where the marriage registrar has refused such certificate as aforesaid, it shall be lawful for either of the parties intending marriage to apply by petition, where the district of such registrar is within any of the towns of Calcutta, Madras, and Bombay, to the supreme court of judicature established by royal charter in the presidency or place within which such district is comprised; or, if such district be not within any of the said towns, then to the judge of the zillah or like district within which the same is comprised, or to such other person as may for this purpose be appointed by the laws or regulations hereinafter mentioned: and the said supreme court, or any judge thereof, or such judge of the zillah or like district, or such other person, shall be empowered to examine the allegations of the petition in a summary way, and shall decide thereon; and the decision of such supreme court, or a judge thereof, or of such judge of the zillah or like district, or of such other person, shall be final, and the marriage registrar to whom the application was originally made shall proceed in accordance therewith, anything hereinbefore contained notwithstanding.

Appeal where registrar refuses certificate.

IX. After the issue of the certificate of the marriage registrar; or, where notice is required to be given under this Act to the marriage registrars for different districts, after the issue of the certificates of the marriage registrars for such districts; marriages may be solemnized between and by the parties described in such certificate or certificates according to such form and ceremony as they may see fit to adopt: provided nevertheless, that every such marriage shall be solemnized between such hours as shall

After issue of certificate, marriage may be solemnized in the presence of marriage registrar and two witnesses.

be fixed by the laws or regulations hereinafter mentioned, in the presence of some marriage registrar, to whom shall be delivered such certificate or certificates as aforesaid, and of two or more witnesses; provided also, that in some part of the ceremony each of the parties shall declare,

‘ I do solemnly declare, that I know not of any lawful impediment why I, *A. B.*, may not be joined in matrimony to *C. D.*’; or shall declare to the like effect.

And each of the parties shall say to the other

‘ I call upon these persons here present to witness, that I, *A. B.*, do take thee, *C. D.*, to be my lawful wedded wife [or husband];’ or words to the like effect.

Provided also, that there be no lawful impediment to the marriage of such parties.

When marriage is not had within three months after notice, a new notice required

X. Whenever a marriage is not had within three calendar months after the notice shall have been so entered by the marriage registrar, the notice, and the certificate which may have been issued thereupon, and all other proceedings thereupon, shall be utterly void; and no person shall proceed to solemnize the marriage, nor shall any marriage registrar register the same, until new notice shall have been given, and entry made, and certificate thereof given, at the time and in the manner aforesaid.

Marriages to be registered.

XI. After the solemnization of any marriage under this Act the marriage registrar present at the solemnization thereof shall forthwith register such marriage in duplicate, that is to say, in a marriage register book according to the form of schedule to this Act annexed, and also in a certificate attached to the marriage register book, as a counterfoil; and the entry of such marriage in both the certificate and the marriage register book shall be signed by the person by or before whom the marriage has been solemnized, if there be any such person, and by the marriage registrar present at such marriage, whether or not the marriage is solemnized by him, and also by the parties married, and attested by two witnesses; and every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage register book.

Certificates of marriages to be transmitted periodically to the secretary of government, &c.

XII. The marriage registrar shall forthwith separate the certificate from the marriage register book, and transmit it, at the end of every month, to the secretary to the government of the presidency or place within which he resides, or to such other officer as may for this purpose be appointed under the laws or regulations hereinafter mentioned; and, if no marriage have been registered during such month, the marriage registrar shall certify such fact under his hand, and such certificate shall be transmitted as aforesaid; and the marriage registrar shall keep safely the said register book until it be filled, and shall then transmit the same to the secretary to the government, or to such other officer as aforesaid, to be kept by him with the records of his office; provided that with regard to those marriages so certified, of which it may appear to the governor general in council desirable that evidence should be transmitted to England, the secretary to the government, or such other officer as aforesaid, shall, at the end of every three calendar months in each year, send all the certificates of marriage sent to him as aforesaid during such three months, signed by him, to the secretary of the East India Company, for the purpose of being delivered to the registrar general of births, deaths, and marriages in England.

Proof of residence of parties or consent not necessary to establish marriage.

XIII. After any marriage has been solemnized under this Act, it shall not be necessary, in support of such marriage, to give any proof in respect of the dwelling of the parties, or of the consent of any person whose consent is thereunto required by law; nor shall any evidence be given to prove the contrary in any suit touching the validity of such marriage.

Registrar may ask certain particulars of parties.

XIV. It shall be lawful for the marriage registrar before whom any marriage is solemnized according to the provisions of this Act to ask of the parties to be married the several particulars required to be registered touching such marriage.

Persons vexatiously entering protests liable to costs and damages.

XV. Every person who shall enter a protest with the marriage registrar against the issue of any certificate on grounds which such marriage registrar, or the supreme court of the presidency or place, or any judge thereof, or the judge of the zillah or like district, or other person, to whom upon the refusal of such certificate an application is authorized by this Act, declares to be frivolous, and such as ought not

to obstruct the issue of the certificate, shall be liable for the costs of all proceedings in relation thereto, and for damages to be recovered by suit by the party against whose marriage such protest was entered.

XVI. Every person who shall knowingly and wilfully make any false oath or false declaration, or sign any false notice or certificate, required by this Act, or by any such laws or regulations as are hereinafter mentioned, for the purpose of procuring any marriage; and every person who shall forbid the issue of any marriage registrar's certificate by falsely representing himself or herself to be a person whose consent to such marriage is required by law, knowing such representation to be false; shall, on conviction, be liable to be punished in such manner as by such laws or regulations may be provided.

Punishment of persons making false oath or declaration.

XVII. Every prosecution under this Act shall be commenced within such time after the offence committed as by such laws or regulations may be provided.

Limitation of prosecution.

XVIII. The government of each presidency or place in India may appoint marriage registrars for the purposes of this Act, and may assign districts to the registrars so to be appointed; and in respect of any place within the territories of any native prince or state in alliance with the East India Company, the governor general of India in council may appoint such marriage registrars and assign to them districts.

Government of each presidency may appoint marriage registrars, &c. governor general may appoint in certain cases.

XIX. The government of each such presidency and place may from time to time appoint reasonable fees to be taken of the parties intending marriage, for receiving and publishing notices of marriage, and for issuing certificates, entering protests, and registering marriages under this Act; and all such fees shall be accounted for and paid over by the marriage registrars to the government treasury, and the government shall provide all necessary books and papers for giving effect to the provisions of this Act.

Government of each presidency may appoint fees to be taken under this Act, to be accounted for by marriage registrars.

XX. It shall be lawful for the governor general of India in council from time to time, by laws and regulations (not inconsistent with the provisions of this Act,) to be made in the manner and subject to the provisions by law required in respect of laws and regulations made by the said governor general in council, to provide for the inspection and publication of notices of marriage given under this Act; for the custody and protection from injury of marriage register books; for appeals from and references in cases of doubt by the marriage registrars in relation to marriages forbidden or protests entered under this Act; for fixing the hours between which marriages may be solemnized under this Act; for appointing the officers to whom certificates are to be transmitted by the marriage registrars; and generally for giving effect to the provisions of this Act.

Governor general in council empowered to make laws and regulations for the purposes of this Act.

XXI. Nothing herein contained shall invalidate or affect any marriage which may be solemnized in India by persons in holy orders, or any marriages which may be solemnized under the provisions of the Act of the fifty-eighth year of King George the Third, chapter eighty-four, or any other marriages which under the laws for the time being in force in India might have been there solemnized in case this Act had not been passed: provided that it shall be lawful for the governor general of India in council from time to time, by laws and regulations to be made as aforesaid, to provide for the registration of any marriages solemnized in India by persons in holy orders, or of any marriages there solemnized under the provisions of the said Act of the fifty-eighth year of King George the Third, chapter eighty-four, or of any other marriages there solemnized, of which it may appear to the said governor general in council desirable that evidence should be transmitted to England; and to provide for the care and custody of the registers of such marriages; and for the transmission of certificates thereof to the secretaries of the governments of the respective presidencies, or to other officers; and for their sending the same to the secretary of the East India Company, for the purpose of being delivered to the registrar general of births, deaths, and marriages in England; and also to provide for the authentication of such certificates.

Marriages may continue to be solemnized as heretofore.

Power of governor general in council to make laws for the regulations of marriages not solemnized under this Act.

XXII. The certificates which shall be delivered to the registrar general of births, deaths, and marriages in England under this Act, or under any laws or regulations to be made thereunder, shall be kept in the general register office, in the same manner; and indexes thereof shall be made and searches permitted, and copies thereof, sealed or stamped with the seal of the general register office, shall be given; in the like manner as

Certificates delivered to registrar general under this Act, or under any laws or regulations made there-

under to be subject to the provisions of 6 and 7 W. 4. c. 86.

by the Act of the session holden in the sixth and seventh years of King William the Fourth, chapter eighty-six, is provided concerning the certified copies (kept in such office under the said Act) of the registers of births, deaths and marriages in England; and every certified copy, purporting to be sealed or stamped with the seal of the said general register office, of any such certificate delivered to the said registrar general under this Act, or under such laws or regulations, shall be received as evidence of the marriage to which the same relates, without further proof of such certificate, or of any entry therein.

Marriages under this Act valid.

XXIII. All marriages solemnized under this Act shall be good and valid in law to all intents and purposes.

Certain marriages in India confirmed.

XXIV. And whereas it is expedient to remove all doubt concerning the validity of marriages heretofore solemnized in India by persons not in holy orders, all such marriages, if not otherwise invalid, shall be deemed and held to be valid in law to all intents and purposes.

Interpretation of "India."

XXV. In the construction of this Act the word "India" shall include all territories for the time being under the government of the East India Company, and all territories of any native princes or states in alliance with the said Company.

Commencement of Act.

XXVI. This Act shall, so far as respects the authority to make such appointments, laws, and regulations as are herein authorized to be made, commence and take effect from and after the passing thereof, and as to all other matters and things commence and take effect from and after the first day of January, one thousand eight hundred and fifty-two, or such other day as the governor general of India shall direct.

Publication of Act.

XXVII. The governor general of India, and the governors of the several presidencies in India, shall cause this Act to be published three times in each of the government gazettes of the several presidencies, the first of such publications to be made within six weeks after this Act shall have been received in such respective presidencies.

Schedule to which this Act refers.

MARRIAGE REGISTER BOOK.									CERTIFICATE OF MARRIAGE.								
No.	When married.	Name and surname.	Whether of full age or a minor.	Condition.	Rank or profession.	Residence at the time of marriage.	Father's name and surname.	Rank or profession of father.	No.	When married.	Name and surname.	Whether of full age or a minor.	Condition.	Rank or profession.	Residence at the time of marriage.	Father's name and surname.	Rank or profession of father.
1	17th May 1851.	William Smith.	Of full age.	Bachelor.	Surgeon.	4, Clive street, Barrack-pore.	John Smith.	Esquire.	1	17th May 1851.	William Smith.	Of full age.	Bachelor.	Surgeon.	4, Clive street, Barrack-pore.	John Smith.	Esquire.
		Anne Green.	Minor.	Widow.	- -	- -	James Hastings.	Esquire.			Anne Green.	Minor.	Widow.	- -	- -	James Hastings.	Esquire.

Married in the house of A. B. by [or before] me,
William Johnson, Marriage Registrar.

This marriage was { William Smith, } in the presence of { Peter Smith,
solemnized between us, { Anne Green, } us, { James Hastings.

Married in the house of A. B. by [or before] me,
William Johnson, Marriage Registrar.

This marriage was { William Smith, } in the presence of { Peter Smith,
solemnized between us, { Anne Green, } us, { James Hastings.

BOOK IV.

OF OFFENCES AGAINST GOVERNMENT.

CHAPTER I.

OF COINING.

3246. The darogahs of police are to apprehend and send to the magistrate all persons uttering base coin, knowing it to be such, or who are charged with counterfeiting or debasing the current coin. On the receipt of credible information they are, under the provisions of section 16,* to proceed to search the houses of persons accused of manufacturing or knowingly uttering base or counterfeit coin; and to seize and transmit to the magistrate any such coin which is found, together with all implements used for the purpose of debasing or counterfeiting the coin; also all books of accounts relating to the sale or circulation of base coin; together with such evidence as is procurable to establish the offence imputed to the accused. Reg. XX. 1817, sect. 17.

Duties of police officers towards persons charged with or suspected of coining.

* *v. paras. 1658 et seq.*

3247. Persons charged with counterfeiting, clipping, filing, drilling, defacing, or debasing the gold or silver coin, are to be committed to the criminal courts, and punished as the law directs. *Beng. Reg. XXXV. 1793, sect. 12. Ced. Prov. Reg. XLV. 1803, sect. 14.*

Persons charged with offences against the coin to be made over to criminal courts.

3248. The above rule is equally applicable to the copper coinage. *Ced. Prov. Reg. XLV. 1803, sect. 51, cl. 1.*

3249. The session judge, before whom a prisoner is convicted of having forged or procured to be forged any counterfeit coin in imitation of any of the gold, silver, or copper coins of the British government in India, or of any coin usually received as money in the British possessions in India: or of having forged, or procured to be forged, any counterfeit stamp or stamp paper in imitation of any public stamp established by the British governments in India: or any counterfeit note, or other security for money, in imitation of any of the public securities of the British governments in India, or of the bank notes issued by any public bank in the British possessions in India;—is to sentence him to receive thirty stripes,* and to be imprisoned in banishment from the district for the term of fourteen years;—unless the judge, on consideration of all the circumstances of the case, is of opinion that any part of the prescribed punishment is too severe; in which case he is authorized to mitigate the sentence to imprisonment for any period not less than seven years. Reg. XVII. 1817, sect. 9, cl. 2.

Sentence to be passed on persons convicted of forgery of counterfeit coin, public stamps, securities, or bank notes.

* *Commutable to 2 years' imprisonment by cl. 2, sect. 2, Reg. II. 1834.*

Power of session judge to mitigate such sentence.

If further mitigation is necessary, trial to be referred to nizamat adawlut.

3250. If in any instance the judge is of opinion that a further mitigation or remission of punishment is necessary, he is, provided he concurs in the conviction of the prisoner, to pass sentence according to the preceding clause, and to refer the trial with his sentiments at large for the final sentence or order of the nizamat adawlut. Reg. XVII. 1817, sect. 9, cl. 3.

The coins forged need not be of base metal; nor the coin imitated a legal tender.

3251. To a conviction of forgery, it is not necessary that the coins forged should be of base metal; or that the imitation be of a coin which is a legal tender of payment, provided it is current among the natives themselves. N. A. R. vol. 2, page 177.

But it seems necessary that the forged should resemble the good coin so far as to deceive people.

3252. A prisoner charged with forging counterfeit coin was acquitted, because it appeared that the pieces were intended as ornaments, and not to be passed for legal coin, being "made of pewter, very light, and so badly fabricated that any child could at once say that they were not good coin." N. A. R. vol. 3, page 198.

The counter need not be detected in the act of forgery.

3253. To establish the charge of counterfeiting coin, it is not necessary that the criminal should be detected in the act of forging the spurious coin. N. A. R. vol. 4, page 95.

Sentence to be passed on persons convicted of using, &c. counterfeit stamps,—or of paying or tendering in payment counterfeit coin, &c.,—or of clipping, &c. the coin.

3254. If any person is convicted before a sessions court, or the court of nizamat adawlut, of the offence of using, issuing, selling, or otherwise disposing of, or attempting to dispose of, counterfeit stamp paper, bearing the imitation of a public stamp, knowing the same to be counterfeit;—or the offence of paying, or tendering in payment, counterfeited coin, bank notes, promissory notes, or other securities for money, knowing the same to be counterfeit;—or of the offence of clipping, filing, drilling, defacing, or debasing the gold or silver coin of the British governments in India, or any coin usually received as money, within the British possessions in India;—he is to be sentenced to imprisonment for such period, not exceeding seven years, as the session judge deems adequate to the nature and circumstances of the case. In every instance of a repetition of the offence, after a previous conviction and discharge, the session judge may further, at his discretion, sentence the offender to receive corporal punishment by stripes.* If a person twice convicted and discharged is again found guilty of any of the above specified offences, and the session judge is of opinion that he ought to be imprisoned for a longer period than seven years, he is to refer the trial with his sentiments for the sentence of the nizamat adawlut in pursuance of cl. 7, sect. 2, Reg. LIII. 1803. Reg. XVII. 1817, sect. 10, cl. 1, 2, and 3.

In case of aggravation or repetition.

* Commutable to 2 years' imprisonment by cl. 2, sect. 2, Reg. II. 1831.

If the offence is repeated more than twice, or very much aggravated.

Proof.

3255. A person cannot be convicted of passing counterfeit coin, unless it be shown that he knew it to be spurious. Reports *L. P.* 1855, part 2, page 673. Where the prisoner uttered a counterfeit coin which had been returned to him on a previous occasion as spurious, it was held that he must have had guilty knowledge at the time of utterance. Reports *W. P.* 1855, part 1, page 765.

Selling counterfeit coin for bullion is punishable as a fraud, and not under the above rule.

3256. The offence of selling counterfeit gold mohurs (much defaced) for bullion, knowing the same to be counterfeit, (though unquestionably a fraud, and punishable as such under the general regulations, and the provisions of the Mahomedan law) cannot be, held to fall within the above rule; inasmuch as the offence of "selling" counterfeit coin as bullion cannot, by any construction, be made to signify the offence of "paying or tendering

in payment." The penalties provided in the following section are applicable to such a case. Const. No. 464.

3257. The melting down gold and silver coins, for the purpose of making ornaments with the metal, is not punishable under the above provisions. Const. No. 559.

Melting down coins is not punishable.

3258. If any person, subject to the jurisdiction of a magistrate, is convicted of having in his or her possession, without lawful or satisfactory excuse, any counterfeited coin, or stamp paper, bearing an imitation of any current coin, or public stamp, and does not show good and sufficient cause for having such counterfeit coin or stamp paper in his or her possession, the person so convicted is to be sentenced by the magistrate to pay a fine equal to four times the nominal value of such counterfeit coin or stamp paper in his or her possession; one moiety of which fine is, on receipt of it, to be given to any informer or informers, who have given information of the offence and established the truth of it. In the event of such fine not being paid, the person convicted is to be confined for such period as the magistrate may direct, not exceeding six months. The counterfeit coin or stamp paper is also, in every instance, to be forwarded to the mint-master, or superintendent of stamps, respectively. Reg. XVII. 1817, sect. 11.

Sentence on person convicted of having in his possession counterfeit coin or stamp paper.

Half the fine to be given to the informer.

Disposal of such coin and paper.

3259. The above provisions are not applicable to a person carrying or conveying counterfeit coin for another, unless there is proof that he was acquainted with the nature of the coin. N. A. R. vol. 3, page 58.

But the person having the coin must be acquainted with its nature.

3260. A prisoner was tried at the sessions on a charge of uttering counterfeit coin with intent to defraud, and acquitted: the magistrate afterwards sentenced the prisoner to a fine for having the counterfeit coin in his possession: it was held that, supposing the trial before the sessions court to have included an investigation of the latter point, the magistrate was not warranted in sentencing the prisoner to a fine on the proceedings held before his commitment, after he had been acquitted by the sessions court and a warrant had been issued for his release. Const. No. 362.

Magistrate cannot punish, for having in his possession counterfeit coin, a person acquitted by the sessions court of uttering the coin with intent to defraud.

3261. The having in possession instruments of coining with intent to counterfeit the current coin, is a punishable offence under the Mahomedan law. N. A. R. vol. 5, page 170.

Having instruments with intent to counterfeit coin is an offence.

3262. One prisoner convicted of forging, and another of procuring the forging, of counterfeit rupees and gold mohurs, were sentenced, under the circumstances of the case, to 3 years' imprisonment with hard labor. N. A. R. vol. 2, page 177.

Precedents.

Forging, and procuring it.

3263. A prisoner convicted of preparing an earthen mould, with intent to forge copper coin, was sentenced, under the circumstances of the case, to imprisonment for 2 years. N. A. R. vol. 2, page 186.

Preparing earthen mould for forging.

3264. The commissioner recommended a prisoner, convicted of forging copper coin, to mercy on account of his great age (72 years) and weak intellect, and because he appeared to be the dupe of other persons who escaped, with an opinion that imprisonment for six months would answer the ends of justice. The court held that age and infirmity were insufficient grounds for mitigation to the extent proposed; and sentenced him to 3 years' imprisonment, without labor and irons. N. A. R. vol. 4, page 174.

Forging piece. Age and infirmity not sufficient excuse for slight punishment.

Having spurious pice, and instruments for manufacturing them.

3265. A prisoner convicted of having in his possession counterfeit pice, and earthen moulds and other implements for fabricating the same, under circumstances indicating that the latter had recently been used in forging spurious pice, was sentenced to 2 years' imprisonment with labor. N. A. R. vol. 4, page 95.

Having implements of coining with intent to forge.

3266. Three prisoners, convicted of having in their possession implements of coining with the intent to forge coin, were sentenced, —No. 1, who had been twice before punished for forging counterfeit coin, to 7 years' imprisonment with labor in irons, — and Nos. 2 and 3 to imprisonment for 3 years without irons, and a fine of 50 rupees each in lieu of labor. N. A. R. vol. 5, page 170. The same sentence was passed in a similar case. N. A. R. vol. 6, page 340.

Vending forged stamps.

3267. Five persons convicted of vending forged stamp paper were condemned to fine and imprisonment in different degrees; but the sentence was passed under the discretionary rule of sect. 30, Reg. VI. 1797, which is rescinded, and is superseded by the later provisions given above. N. A. R. vol. 1, page 22.

Forging stamps, and vending them.

3268. A prisoner charged with vending forged stamp paper, pleaded that he had received it to sell on account of another person; but he failed to substantiate this plea; and as implements of forgery were found in his house, the presumption was held that he not only sold the stamp paper, knowing it to be forged, but that he actually committed the forgery. He was sentenced to tusheer, godna, and imprisonment for 7 years,—under sect. 3, Reg. II. 1807, which has also been superseded by the provisions of Reg. XVII. 1817. N. A. R. vol. 1, page 284.

Altering the value of stamp paper.

3269. A vakeel convicted, in three cases, of altering or causing to be altered the value of a number of sheets of stamp paper, was sentenced to tusheer, and imprisonment with labor for 10 years. (a) N. A. R. vol. 2, page 466.

(a) The following information, contained in a letter from the judge of the city of Patna, to the address of the superintendent of stamps, dated the 13th of June 1825, is calculated to afford some idea of the extent to which practices similar to those which formed the subject of the above trials had been carried, and the loss to which the government had been consequently subjected in this branch of the public revenue. "I received charge of this city in the latter end of March 1825; and, so early as the commencement of April, noticed the prevalence of a species of forgery, by which stamps of inferior value are made to bear a greater value, and in such a fictitious shape are used to file as original plaints, plaints of appeal, &c. As it appeared to be highly important that this nefarious plan should be thoroughly sifted, that the forgers, aiders and abettors, should be brought to justice (measures which in my opinion offered the only sure means to the prevention of the offence in future) I entered at once into the investigation. In the progressive steps of the investigation, I discovered that the files of the sudder amceus, register, judge, and judges of appeal were all infected, and that the whole required to be narrowly searched. I, in consequence, determined to commence with the lower court, taking the files severally in hand, so as to allow time to the stamp vendors to give in such reports as appeared necessary, and to prevent this investigation materially interrupting the current business of the civil and criminal court. Upon an examination of the suits actually filed and undecided in the moulavi sudder ameen's court, I have discovered thirty-six forged original plaints, and thirteen forged vukalut-namas; and, in tracing the utterers of the forgeries, I have brought the whole home to one vakeel, by name Bhondoo Lal, who, by his defence, has thrown considerable further light upon the subject, and furnished me with information regarding his associates. The stamp vendors are now compiling a report on the suits upon the file of the register previous to their entering upon the file of the judge, which, as it embraces appeals from all the lower courts, will of course contain the greatest number, and in which, upon a cursory view, I have already marked 435 forgeries. Meanwhile it chanced to occur to me, that the forgers, who would naturally seek the most advantageous outlet for uttering their paper, had possibly taken advantage of sect. 11, Reg. XIII. 1810,

CHAPTER II.

OF OFFENCES AGAINST THE STAMP LAWS.

3270. If any deed, instrument, petition, pleading or other writing, required to be written on stamped paper, and written on the prescribed stamped paper, is filed, exhibited, or recorded in any court of judicature or public cutchery, or before any judge or other public officer, not bearing the signature and endorsement of a licensed stamp vendor (or not procured in the manner prescribed by this regulation, and duly certified to be so, when not obtained from a licensed vendor [*i. e.* stamp paper or other material obtained by individuals under sect. 11, each separate sheet or piece of which must bear on the back the signature of an officer on the establishment of the superintendent of stamps]), the person or persons filing, exhibiting, or recording the said deed, instrument, petition, pleading, or writing, or causing or procuring it to be filed, exhibited, or recorded, is to forfeit a sum equal to five times the value of the said stamped paper. If any deed, instrument, petition, pleading, or document is filed, exhibited, or recorded as aforesaid, having a forged or counterfeit stamp or signature, the person filing, exhibiting, or recording such deed, instrument, or document, that is to say, the party or his agent, who has produced the same for the purpose of being filed, exhibited, or recorded, is to forfeit to government a sum equal to twenty times the value of the stamp, which ought to have been used; unless the material, on which the same is executed, bears the signature and endorsement required by this regulation, and the party is able to show to the satisfaction of the judge or other officer conducting the enquiry on the part of government as hereinafter directed, that the material stamped with a forged stamp was purchased or obtained on the date and in the manner specified on the back, or was otherwise procured in some manner prescribed or permitted by this regulation. If the said signature and date is duly endorsed on the back of the material stamped as aforesaid with a forged impression, and the proof adduced to the fact and to the date of purchase is deemed by the judge or other officer, before whom or in whose office the deed, instrument, or other writing has been filed, exhibited, or recorded, to be sufficient, that officer is to transmit the document to the collector with a communication of his judgment in the case, in order that proceedings may be instituted against the vendor; and the collector, on payment by the party of the established duty chargeable on account of the matter of the instrument or deed in question, is

Penalty for filing or recording stamped paper not duly endorsed and signed.

Penalty for filing such paper of which the stamp or signature is forged; unless the person filing it is able to show that he purchased it as endorsed.

In such cases courts how to proceed.

and had made fictitious prosecutions on altered stamps with a view to defraud the Honorable Company of the institution fee. I accordingly addressed the court of appeal, requesting the judges of the court to furnish me with any cases of *razeenama baznama* in suits which were filed during the years 1822-23; and in their reply to my letter, the judges of the court of appeal furnished me with four suits, all of which had been brought to decision by *baznama*. I immediately proceeded to the investigation; in the progress of which I have established that the whole four are fictitious; that the stamps of the plaints were originally of one rupee in value, have been altered so as to bear a superior value, two of them to the amount of 250 rupees, and two of 350 rupees, and that the gang concerned in filing them obtained the sum total of their apparent value, or 1200 rupees, from the treasury of the court of appeal." *Note at N. A. R. vol. 2, page 468.*

to forward it to the superintendent of stamps, in order that it may be duly stamped; the amount so paid being recoverable from the vendor or from any fine levied from him on account of the transaction.(a) Reg. X. 1829, sect. 13, cl. 1.

Persons sentenced under this regulation to be confined in civil jail, except vendors convicted of extortion.

3271. Persons sentenced to imprisonment under the provisions of this regulation are to be confined in the dewanny jail; and the civil judge is to give effect to sentences passed by the proper authorities adjudging confinement. But stamp vendors convicted of extortion under cl. 9, sect. 10 [*i. e.* of taking from a purchaser a higher price than that denoted on the stamp sold, in which case the offender is to be sentenced by the collector or other covenanted officer qualified to take cognizance of the offence to 6 months' imprisonment] are to be forwarded to the magistrate of the district to be confined in the criminal jail. Reg. X. 1829, sect. 20.

Punishment of stamp vendor rendering false account of the receipts and proceeds of sale of paper entrusted to him.

3272. If a true account of the receipts and of the proceeds of the sale of paper entrusted to him is rendered by a vendor of stamps, when required to furnish it on his removal or resignation, only the penalty prescribed in cl. 11, sect. 10, Reg. X. 1829 [*i. e.* a certain fine to be imposed by the collector] is exigible for the non-delivery of paper or money due according to the account; but, if the account rendered is false, covering embezzlement or taking credit for remittances never made, the vendor is liable, under the general regulations, to a prosecution in the criminal court for fraud and embezzlement. Const. No. 626. N. A. R. vol. 4, page 67.

CHAPTER III.

OF OFFENCES AGAINST THE POST OFFICE LAWS.

Exclusive privilege of carrying letters vested in the East India Company.

3273. Wheresoever, within the territories under the government of the East India Company, posts or post communications are, or shall be, established by the East India Company, the said East India Company shall have the exclusive privilege of conveying by post, from one place to another, all letters other than letters conveyed by her majesty's mails, except in the following cases; and shall also have the exclusive privilege of performing all the incidental services of receiving, collecting, sending, dispatching, and delivering all letters, except in the following cases, that is to say: 1. Letters sent by a private friend in his way,

(a) It appears from the above that, in the case of a paper merely requiring the prescribed endorsement and signature of the vendor, the court or authority before whom it is filed must levy the penalty:—in the case of a paper bearing such endorsement and signature, but the stamp or signature of which is forged, if the person filing it satisfies the court or authority before whom it is filed that the paper was *bonâ fide* sold to him, and that he has not been guilty of any offence, then the paper is to be made over to the collector to proceed against the vendor:—but if the paper, endorsement, and signature are all found to be forged, then the court or authority should proceed according to the rule in other cases of forgery; *i. e.* should make over the case to the magistrate.—For the punishment of persons guilty of forging stamps or stamp paper, or of using, issuing, or disposing of such, or of having such in their possession, see the preceding chapter “of coining.”

journey, or travel, so as such letters be delivered by such friend to the person to whom they shall be directed, without hire, reward, or other profit or advantage, for receiving, carrying, or delivering the same. 2. Letters solely concerning the affairs of the sender or receiver thereof, sent by a messenger on purpose. 3. Letters solely concerning goods or other property sent either by sea or land, to be delivered with the goods or property which such letters concern, without hire, reward, or other profit or advantage, for receiving, carrying, or delivering such letters. But nothing herein contained shall authorize any person to make a collection of such excepted letters for the purpose of sending them in the manner hereby authorized. Act XVII. 1834, sect 2.

3274. Wheresoever, within the said territories, posts or post communications are, or shall be, established by the East India Company, the following persons are expressly forbidden to collect, carry, or deliver any letter or letters, or to receive any letter for the purpose of carrying or delivering the same, although they shall not receive hire or reward for so doing, that is to say: 1. Common carriers of passengers or goods, and their drivers, servants, or agents; except letters solely concerning goods in their carriages. 2. Owners and commanders of ships, steam-boats, or other vessels passing on any river or canal, or to or from any port in the territories under the government of the East India Company, and their servants or agents; except letters solely concerning goods on board. Act XVII. 1854, sect 3.

Persons prohibited from carrying or delivering letters without hire or reward.

3275. Every person who shall convey otherwise than by the post a letter not excepted from the said exclusive privilege shall, for every letter so conveyed, forfeit a sum not exceeding fifty rupees; and every person who shall be in the practice of so conveying letters not so excepted shall, for every week during which the practice shall be continued, forfeit a further sum not exceeding five hundred rupees: and every person who shall perform otherwise than by the post any services incidental to conveying letters from place to place, whether by receiving, taking up, ordering, collecting, carrying, or delivering a letter or letters not excepted from the said exclusive privilege, shall forfeit for every such letter a sum not exceeding fifty rupees; and every person who shall be in the practice of so performing any such incidental services shall, for every week during which the practice shall be continued, forfeit a further sum not exceeding five hundred rupees: and every person who shall send a letter not excepted from the said exclusive privilege otherwise than by the post, or shall either tender or deliver a letter not so excepted in order to be sent otherwise than by the post, shall forfeit for every such letter a sum not exceeding fifty rupees; and every person who shall be in the practice of committing any of the acts last mentioned shall, for every week during which the practice shall be continued, forfeit a further sum not exceeding five hundred rupees: and every person who shall make a collection of excepted letters for the purpose of sending them otherwise than by the post, shall forfeit for every such letter a sum not exceeding fifty rupees; and every person who shall be in the practice of making a collection of excepted letters for such purpose shall forfeit, for every week during which the practice shall continue, a further sum not exceeding five hundred rupees. Every person who shall carry, receive, or deliver a letter, or collect letters contrary to the provisions of section 3 of this Act, shall forfeit for every such letter a sum not exceeding fifty rupees; and every person who shall

Penalties for breach of privilege.

be in the practice of committing any of the acts last mentioned shall, for every week during which the practice shall be continued, forfeit a further sum not exceeding five hundred rupees. Act XVII. 1854, sect 4.

Where there is
no banghy post.

Letters and other
articles exceeding
twelve tolahs, but
not exceeding forty
tolahs.

Certificate.

Parcels exceeding
forty tolahs

Where banghy
parcels and letter
mails are conveyed
in the same carri-
age

No dangerous
substance to be
sent by post

Vendors of post-
age stamps to be
appointed.

3276. Where there is no banghy post established on any line of road, letters, parcels, and packets, exceeding twelve tolahs, and not exceeding forty tolahs in weight, shall be received and transmitted by the letter post. Letters shall be charged according to the scale in section 6, and newspapers, pamphlets, and other printed or engraved papers according to the scale in section 7 of this Act, as the case may be; parcels and packets shall be charged with banghy postage according to the scale in section 11 or section 12 of this Act, as the case may be, if it be certified in writing on such parcel or packet, under the full signature and address of the sender, that it does not contain any letter or other written communication, or any newspaper, pamphlet, or other printed or engraved paper. If any such certificate be false, any such thing contained in such certified letter or other article shall be charged with postage according to the rates specified in section 6 or section 7 of this Act as if sent separately, and the sender will be subject to the penalty hereinafter provided. Parcels exceeding forty tolahs, and not exceeding six hundred tolahs in weight, shall be transmitted along any such line as banghy parcels; but it shall be in the discretion of the post master or deputy post master, to whom such parcels are brought for dispatch, to forward them at such times and in such manner as may be convenient. Act XVII. 1854, sect. 15.

3277. Whenever the post master general of any presidency shall have notified in the official gazette, that the banghy post is conveyed in the same carriage with the letter post along any line of road, it shall not be lawful to send by the banghy post any letter or written communication of less weight than twelve tolahs, or any packet of newspapers; and every person who shall knowingly send by the banghy post, along any such line of road, any such letter, written communication, or newspaper enclosed in a parcel, shall forfeit for every such offence a sum not exceeding fifty rupees, and postage shall be charged for every such letter, packet, or newspaper, as if sent separately by the letter post. Act XVII. 1854, sect. 16.

3278. No person shall knowingly post, or send, or tender, or deliver in order to be sent by the post, any letter, parcel, or packet containing any explosive or other dangerous material or substance; and any person contravening this prohibition shall forfeit for every such offence a sum not exceeding two hundred rupees. Act XVII. 1854, sect. 24.

3279. The governor general of India in council may make rules for the appointment and government of vendors of postage stamps, and thereby direct how and under what terms and conditions postage stamps may be supplied to them for sale; and whether any and what security shall be given by such vendors, and whether any and what remuneration or discount shall be allowed to them, and how and in what manner, and at what time or times such vendors shall keep and render their accounts, and pay over the proceeds of any sales made by them or re-deliver the stamps entrusted to them. Act XVII. 1854, sect. 31.

3280. Government vendors of postage stamps shall be bound by such rules, and in case of any wilful breach thereof, shall be liable to a penalty not exceeding two hundred rupees, in addition to any other proceedings to which they may be liable. Act XVII. 1854, sect. 32.

Vendors to be bound by rules.

3281. Any government vendor of postage stamps, who shall be convicted of refusing or unnecessarily delaying, without reasonable excuse, to furnish postage stamps to any person desiring to purchase the same, and tendering in lawful currency the full value thereof (the stamp vendor having in his possession for sale sufficient stamps of the description and value required), shall be subject to a fine not exceeding one hundred rupees. Act XVII. 1854, sect. 33.

Penalty of vendor refusing to supply stamps

3282. Any government vendor of postage stamps, convicted of taking from a purchaser a higher price than the value denoted on the stamps sold, shall be deemed guilty of extortion; and shall be punished, on conviction, with imprisonment, with or without hard labor, for any term not exceeding six months, or to a fine not exceeding one hundred rupees, and shall also be liable to refund to the purchaser the whole amount proved to have been taken in excess, which amount may be recovered by such purchaser before a magistrate in the same manner as any penalty under this Act. Act XVII. 1851, sect. 31.

Penalty of vendor selling stamps for higher price than the value denoted thereby.

3283. If any person shall forge or counterfeit, or cause or procure to be forged or counterfeited, any die, plate, or other instrument used for the purpose of making postage stamps; or if any person shall forge or imitate, or cause to be forged or imitated, any postage stamp; or if any such person shall knowingly, and without lawful excuse (the proof of which excuse shall lie on the person accused), have in his possession any false, forged, or counterfeited die, plate, or other instrument, resembling, or intended to resemble, either wholly or in part, any die, plate, or instrument used for the purpose aforesaid; or if any person shall stamp or mark any paper or other substance with any such false, forged, or counterfeit die, plate, or instrument as aforesaid; or if any person shall knowingly use, utter, sell, or expose for sale, or shall knowingly, and without lawful excuse (the proof of which excuse shall lie on the person accused), have in his possession any paper or other substance having thereon the impression of any such false, forged, or counterfeit die, plate, or other instrument as aforesaid; or having thereon any counterfeit stamp resembling, or intended to resemble, or to be mistaken for, a postage stamp, such person so offending, and every person knowingly aiding, abetting, or assisting such person in committing any such offence, shall be punished with imprisonment, with or without hard labor, for a term not exceeding seven years, and shall also be liable to fine. Act XVII. 1854, sect. 35, cl. 1.

Penalties for forging stamps, &c.

3284. Any officer of police may seize and transmit to the magistrate any such forged or counterfeit die, plate, or other instrument, or any such forged or counterfeit postage stamp. Act XVII. 1854, sect. 35, cl. 2.

Forged stamps may be seized,

3285. Any officer of police having power by law to search for stolen property may, subject to the provisions under which he is empowered to make such search, proceed to search houses or other places in which there may be reasonable cause to suspect that there

and searched for.

is any such forged or counterfeit article, and shall seize and transmit to the magistrate any such counterfeit article that may be found therein. Act XVII. 1854, sect. 35, cl. 3.

Penalties for evading postage stamp duties.

3286. If any person shall fraudulently remove any postage stamp from any letter or other thing to which such stamp shall have been affixed; or if any person shall knowingly use any such stamp or stamps so fraudulently removed; or if any person shall fraudulently erase or remove, from any such stamp or stamps, any writing or other matter or thing thereon written or impressed, every person so offending shall forfeit a sum not exceeding two hundred rupees for every such offence. Act XVII. 1854, sect. 36.

Postage on unpaid letters, &c., to be paid by the receiver.

3287. The person to whom any letter or other article, the postage of which has not been paid, shall be delivered, shall not be bound to pay the postage if he forthwith return the same unopened; but, if he open the same, he shall be bound to pay the postage due thereon. If he forthwith return the same unopened, the sender of the letter or packet shall be bound to pay the postage thereof. If any person shall refuse to pay any postage which he is legally bound to pay for any letter or other article, the same may be recovered for the use of the East India Company by any post master general, or by any officer in charge of a post office by order of a post master general, in the same manner as a fine may be recovered under this Act; and it shall be lawful for the officer in charge of any post office to withhold from the person so refusing, until such postage be paid, any other letter or packet addressed to that person, not being superscribed as on the public service. Provided always, that if a letter or other article shall appear to the satisfaction of the post master of the office of delivery to have been maliciously sent for the purpose of annoying the person to whom it is addressed, the post master of the delivery office may remit the postage. Act XVII. 1854, sect. 37.

Commanders of inward bound vessels carrying mails, how to proceed.

3288. When any vessel arrives by sea at any place within the territories under the government of the East India Company at which there is a post office, the commander of such vessel shall, as speedily as possible, cause every letter and packet on board of such vessel, which is directed to that place, and not excepted from the exclusive privilege of the post office, to be delivered either at the post office or to some officer of the post office authorized to receive the same; and if there be on board any letter or packet directed to any other place, and not excepted from the exclusive privilege aforesaid, the said commander shall, as speedily as possible, report the same to the post master of the place at which he has arrived, and shall act according to the directions he may receive from such post master, and the receipt of such post master shall discharge such commander from all responsibility in respect of such letter or packet. Every commander of a vessel who shall wilfully disobey any of the directions contained in this section, shall be punished with a fine not exceeding one thousand rupees. Act XVII. 1854, sect. 40.

Penalty.

Detention of letters on board prohibited.

3289. Every person being either the commander of a vessel inward-bound, or any one on board such vessel, who shall, within the said territories, knowingly have in his possession any letter not excepted from the privilege of the post office, after any part of the letters on board the said vessel shall have been sent to the post office, shall forfeit for every such letter a sum not exceeding fifty rupees, whether the letter be in the baggage or

on the person of the offender or otherwise in his custody ; and every such person who shall detain any such letter after demand made for the same by an officer of the post office, shall forfeit for every such letter a sum not exceeding one hundred rupees. Act XVII. 1854, sect. 41.

3290. For every letter delivered by the commander of any ship in conformity with the directions of section 40 of this Act, the officer in charge of the post office shall pay to the said commander the sum of one anna ; and the sum of one anna shall be chargeable as postage on such letter in addition to any other postage chargeable thereon under this Act. Provided that no payment shall be made to the commander of any vessel on account of the delivery of any letter, unless the claim of such commander shall be preferred before the vessel leaves the place at which the letter was delivered, or before the expiration of two months from the date of the arrival of such vessel. Provided also, that nothing contained in sections 40, 41, and 42 of this Act shall extend to any letter or packet conveyed by her majesty's mails. Act XVII. 1854, sect. 42.

Bounty money.

3291. The commander of every vessel leaving any place in the said territories by sea shall receive on board of such vessel every letter and packet which he shall be required so to receive by any officer of the post office, and shall give a receipt for such letter or packet ; and every commander of a vessel who shall wilfully disobey any direction contained in this section shall be punished with a fine not exceeding one thousand rupees. Act XVII. 1854, sect. 43.

Commanders of outward bound vessels to receive mails on board.

3292. Every person who shall, for the purpose of defrauding the post office revenue, wilfully certify, by writing, on any official or other letter or packet delivered at any post office for conveyance by post, that which is not true in respect of such letter or packet, or in respect of the whole of its contents, or shall knowingly send or deliver, or attempt to send or deliver for conveyance by post, any letter or packet with any such false certificate thereon ; and every person who shall knowingly send, or permit to be sent by post, under color or pretence of an official communication, any letter, paper, writing, or other enclosure of a private nature ; and every person who shall aid, abet, or conceal any of the offences in this section above-mentioned ; shall, for every such offence, forfeit a sum not exceeding five hundred rupees. Act XVII. 1854, sect. 47.

Penalty for false certificate.

3293. The government shall not be responsible for any loss or damage which may occur in respect of anything entrusted to the post office for conveyance ; and no person employed by the government in the post office department shall be responsible for any such loss or damage, unless that person shall cause such loss or damage, negligently, maliciously, or fraudulently. Act XVII. 1854, sect. 49.

Government not responsible for loss.

3294. Whoever being in the employ of the government in the post office department shall fraudulently secrete, make away with, or appropriate, any letter, parcel, or packet which may have been entrusted to him, or anything contained in any such letter, parcel, or packet, or shall mutilate or break open any such letter, parcel, or packet, or any banyhy parcel, or box, with the intention of fraudulently appropriating anything therein contained,

Penalty for secreting, opening, or making away with letters, &c., by persons employed in the post office.

shall be punished with imprisonment, with or without hard labor, for a term not exceeding seven years, and shall also be liable to fine. Act XVII. 1854, sect. 50.

Penalty for detaining mails.

3295. It shall not be lawful for any person, unless acting by express order of the government, to detain, except for a criminal offence, a post office messenger, whilst carrying the mails, or to detain any carriage or horse upon which the mails are being carried, or on any pretence to open a packet in transit from one post office to another; and every person who shall be guilty of any of the above-mentioned offences shall be punished with a fine not exceeding five hundred rupees. Act XVII. 1854, sect. 51.

Penalty for retaining letters, &c., delivered by mistake.

3296. Every person who shall fraudulently retain, or wilfully secrete, or make away with, or keep, or detain, or, being required to deliver up by an officer of the post office, shall neglect or refuse to deliver up a post letter or other article which ought to have been delivered to any other person, or a post letter bag containing a letter or other article or packet, which shall have been sent by the post, shall be punished, on conviction before a magistrate, with imprisonment, with or without hard labor, for a term not exceeding two years, and shall also be liable to fine. Act XVII. 1854, sect. 52.

Penalty for neglect on the part of persons employed to carry mails.

3297. Every person employed to convey or deliver any post-bag, or any letter, parcel, or packet sent by post, who shall be guilty while so employed of any act of drunkenness, carelessness, or other misconduct, whereby the safety of any such bag, or letter, parcel, or packet shall be endangered; or who shall loiter or make delay in the conveyance or delivery of any such bag, letter, parcel, or packet; or who shall not use proper care and diligence safely to convey or deliver any such bag, letter, parcel, or packet; shall be liable to a fine not exceeding fifty rupees: and any person employed to deliver a letter, parcel, or packet, sent by the post, who shall not duly deliver the same, shall, within a reasonable time, not exceeding twenty-four hours report the fact at the post office where he received such letter, parcel, or packet, and return the same; and, if any such person shall wilfully make a false report, he shall be liable to a fine not exceeding fifty rupees. Act XVII. 1854, sect. 53.

Penalty for embezzlement by persons employed in the post office.

3298. Whoever being in the employ of the government in the post office department, and being entrusted to receive money for postage duty or any other public purpose, shall fraudulently appropriate the same, shall be punished, on conviction before a magistrate, with imprisonment, with or without hard labor, for a term not exceeding two years, and shall also be liable to fine. Act XVII. 1854, sect. 54.

Penalty for fraudulently altering marks on letters, &c., by persons employed in the post office.

3299. Whoever being in such employ as is described in section 54 shall fraudulently put any wrong mark on any letter, parcel, or packet, or shall fraudulently alter, remove, or cause to disappear, any mark or stamp which is on any letter or packet, or shall fraudulently use or place with or upon any letter or packet any stamp which shall have been removed from any other letter or cover, or shall aid, abet, or conceal any of the above-named acts, shall be punished, on conviction before a magistrate, with imprisonment, with or without hard labor, for a term not exceeding two years, and shall also be liable to fine. Act XVII. 1854, sect. 55.

3300. Whoever being in such employ as is described in section 54, and being entrusted with the preparing or keeping of any document, shall, with a fraudulent intention, prepare that document incorrectly or alter that document, or shall aid, abet, or conceal any of the above-named acts, or secrete or destroy that document, shall be punished, on conviction before a magistrate, with imprisonment, with or without hard labor, for a term not exceeding two years, and shall also be liable to fine. Act XVII. 1854, sect. 56.

Penalty for incorrectly preparing documents, or secreting documents by persons employed in the post office.

3301. Whoever being in such employ as is described in section 54, shall send by post, or put into any post-bag, any unstamped letter, parcel, or packet upon which postage has not been paid or charged in the manner prescribed in this Act, intending thereby to defraud the government of the postage on such letter, parcel, or packet, or shall aid, abet, or conceal, any such acts, shall be punished, on conviction before a magistrate, with imprisonment, with or without hard labor, for a term not exceeding two years, and shall also be liable to fine. Act XVII. 1854, sect. 57.

Penalty for sending letters without charging postage, by persons employed as above.

3302. Any person, whether a European British subject or not, who shall be guilty of any offence for which, according to the provisions of this Act, he shall be liable to a fine only, shall be punishable for such offence, by any justice of the peace for any of the presidency towns of Calcutta, Madras, and Bombay, magistrate, joint magistrate, or person lawfully exercising the powers of magistrate; and any person hereby made punishable by a justice of the peace shall be punishable upon summary conviction. Act XVII. 1854, sect. 58.

Fines how to be recovered.

3303. No conviction, order, or judgment of any justice of the peace shall be quashed for error of form or procedure, but only on the merits; and it shall not be necessary to state on the face of the conviction, order, or judgment, the evidence on which it proceeds; but the depositions taken, or a copy of them, shall be returned with the conviction, order, or judgment, in obedience to any writ of *certiorari*; and if no jurisdiction appears on the face of the conviction, order, or judgment, but the depositions taken supply that defect, the conviction, order, or judgment shall be aided by what so appears in such depositions. Act XVII. 1854, sect. 59.

Conviction to be quashed on merits only. Form of conviction, &c.,

3304. A magistrate may refer for trial and decision any charge of an offence hereby made punishable by fine only to any of his assistants, or to any deputy magistrate lawfully appointed to exercise the powers of a covenanted assistant; and in such case every such assistant or deputy magistrate may exercise all the powers vested in a magistrate, subject to all the rules applicable to criminal cases deputed to such assistants or magistrates acting judicially. Act XVII. 1854, sect. 60.

Magistrate may refer charge to his assistant.

3305. The local government may give general authority to any such assistant or deputy magistrate to exercise, without reference by a magistrate, any of the powers which they are hereby rendered competent to exercise upon reference by a magistrate, subject to appeal to the magistrate from any conviction by such assistant or deputy magistrate within one month from the date of the conviction. Provided that a magistrate may at any time call from any of his assistants, or from any deputy magistrate subordinate to him, any case pending before such assistant or deputy magistrate. Act XVII. 1854, sect. 61.

Government may authorize assistants and deputy magistrates to exercise certain powers.

Fines how levied.

3306. All fines imposed under the authority of this Act, for offences punishable by fine only, by any justice of the peace, magistrate, joint magistrate, or person lawfully exercising the powers of a magistrate, or by any assistant to a magistrate or deputy magistrate, may, in case of non-payment thereof, be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand of any of the above-named officers; and in case any such fine shall not be forthwith paid, any such officer may order the offender to be apprehended and detained in safe custody until the return can be conveniently made to such warrant of distress, unless such party shall give security to the satisfaction of such officer for his appearance at such place and time as shall be appointed for the return of the warrant of distress, and such officer may take such security by way of recognizance or otherwise; and if, upon the return of such warrant, it shall appear that no sufficient distress can be had whereon to levy such fine, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such officer by the confession of the party or otherwise, that he has not sufficient goods and chattels whereupon such fine or sum of money could be levied if a warrant of distress were issued, any such officer, by warrant under his hand, may commit the offender to prison, there to be imprisoned only, or to be imprisoned and kept to hard labor, according to the discretion of such officer, for any term not exceeding two calendar months where the amount of the fine shall not exceed fifty rupees; and for any term not exceeding four calendar months, where the amount shall not exceed one hundred rupees; and for any term not exceeding six calendar months in any other case; the commitment to be determinable in each of the cases aforesaid on payment of the amount. Act XVII. 1854, sect. 62.

Imprisonment if no sufficient distress, &c.

Moiety of fines to informer.

3307. A share not exceeding one moiety of every fine imposed and recovered under this Act may be awarded to the informer. Act XVII. 1854, sect. 63.

No proceedings to be taken without certain authority.

3308. No proceedings shall be taken for the recovery of any such fine without an order of government, or an order in writing of the director general of the post office, or of a post master general. Act XVII. 1854, sect. 64.

Servants of East India Company committing offences in foreign states in alliance.

3309. If any servant of the East India Company, who shall be employed by the said Company in the post office department, or shall be appointed a vendor of postage stamps, or entrusted by the said Company or any of the said local governments with the sale of postage stamps within the dominions of any foreign prince or state in alliance with the said Company, in which a post shall be established by the said Company, shall, within the dominions of such prince or state, commit any act hereby prohibited, or omit to do any act hereby required to be done by any person similarly employed, appointed, or entrusted as aforesaid within the territories under the government of the said Company, such servant of the said Company shall be guilty of an offence; and, on conviction thereof, shall be punished in the same manner as if such act had been done or omitted within the said last-mentioned territories, and every such person may be tried, convicted, and punished either by fine or otherwise, according to the nature of the offence, by any court or officer duly empowered by the governor general of India in council to take cognizance of offences committed in such dominions by servants of the East India Company, or by any court or magistrate, or other

competent officer, in any part of the territories within the government of the East India Company, in the same manner as if the offence had been committed in such part of the said territories. Act XVII. 1854, sect. 65.

3310. The word “magistrate” in this act shall include joint magistrates and persons lawfully exercising the powers of magistrates, and the word “fine” shall include a penalty or forfeiture, or a sum of money due upon a forfeited recognizance. Act XVII. 1854, sect. 66.

Interpretation.

3311. It shall be lawful for the governor general of India in council to frame rules for the management of all or any zumcendaree, thana, or other district daks, and to declare, from time to time, what portions of this Act shall be applicable to such daks and to persons employed in connexion therewith. Act XVII. 1854, sect. 70.

District daks.

3312. Letters which individuals address on their private affairs to any government officer must be sent pre-paid by stamps; and this rule is to be understood to include letters transmitting bills of exchange, promissory notes, receipts, government securities, &c., to any public officer. When public officers write letters on such subjects to individuals, they are to subscribe on the envelopes, with their official signatures, the words “bearing postage.” Govt. Order India, August 12, 1854, rule 35.

Letters addressed to public officers on private affairs must be pre-paid; and letters sent by public officers on such affairs are to be marked “bearing.”

CHAPTER IV.

OF OFFENCES AGAINST THE LAWS RELATING TO RAILWAYS.

3313. No person shall enter any carriage used on any such railway, for the purpose of travelling therein, without having first paid his fare, and obtained a ticket. Every person desirous of travelling on such railway shall, upon payment of his fare, be furnished with a ticket, specifying the class of carriage and the distance for which the fare has been paid, and shall, when required, show his ticket to any servant of the said company duly authorized to examine the same, and shall deliver up such ticket upon demand, to any of the company's servants duly authorized to collect tickets. Any person not producing or delivering up his ticket, as aforesaid, shall be liable to pay the fare from the place whence the train originally started, unless he can prove that he has travelled a less distance only, in which case he shall be liable to pay the fare only from the place whence he has travelled. Act XVIII. 1854, sect. 1.

Fares to be pre-paid.

Passenger tickets to be given up on demand.

Penalty.

3314. At the intermediate stations, the fares shall be deemed to be accepted, and the tickets furnished, only upon condition that there be room in the train for which the tickets shall be furnished. In case there shall not be room for all the passengers to whom tickets shall have been furnished, those who shall have obtained tickets for the longest distance shall have the preference; and those who shall have obtained tickets for the same distance shall have the preference according to the order in which they shall have

At intermediate stations, fares and tickets to be conditional.

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received their tickets. Provided that all officers and troops of her majesty, or of the East India Company, on duty, and all other persons on the business of the East India Company who, by virtue of any contract with the East India Company, shall be entitled to be conveyed on such railway in preference to, or in priority over the public, shall be entitled to such preference and priority without reference to the distance for which, or the order in which, they shall have received their tickets. Act XVIII. 1854, sect. 2.

Penalty for fraud.

3315. Any person who shall defraud or attempt to defraud any such railway company, by travelling, or attempting to travel, upon such railway, without having previously paid his fare; or by riding in or upon a carriage of a higher class than that for which he shall have paid his fare; or by continuing his journey in or upon any of the carriages of the company beyond the place for which he shall have paid his fare, without previously paying the fare for the additional distance, and with intent to avoid payment thereof; or who shall knowingly and wilfully refuse or neglect, on arriving at the point to which he shall have paid his fare, to quit such carriage; or who shall, in any other manner whatever, attempt to evade the payment of his fare, shall be liable to a fine not exceeding fifty rupees for each offence. Act XVIII. 1854, sect. 3.

Fine for entering carriage in motion;

or riding on the steps.

3316. Any passenger, who shall get into or upon, or attempt to get into or upon, or shall quit or attempt to quit any carriage upon any such railway, while such carriage is in motion; or who shall ride or attempt to ride upon any such railway, on the steps, or any other part of a carriage, except on those parts which are intended for the accommodation of passengers, shall be liable to a fine not exceeding twenty rupees for each offence. Act XVIII. 1854, sect. 4.

Fine for riding on engine, tender, or luggage-van.

3317. Any person other than the engine-man, and fire-man, and assistant fire-man, if any, who, without the special licence of the superintendent of locomotives, shall ride or attempt to ride upon any locomotive engine or tender upon any such railway; and any person other than the guard or breaksmen, who, without such licence as aforesaid, shall ride or attempt to ride upon such railway, in or upon any luggage-van or goods-waggon, or other vehicle not appropriated to the carriage of passengers, shall be liable to a fine not exceeding twenty rupees for each offence. Act XVIII. 1854, sect. 5.

Smoking prohibited.

3318. If any person shall smoke, either on the premises, or in or upon any of the carriages belonging to any such railway company except in places or carriages which may be specially provided for the purpose, he shall be liable to a fine not exceeding twenty rupees for each offence; and, if any person persist in infringing this regulation after being warned to desist by any of the servants of the company, such person, in addition to incurring the liability above-mentioned, may be removed by any of the servants of the company from any such carriage, and from the premises of the company, and shall forfeit his fare. Act XVIII. 1854, sect. 6.

Penalty for intoxication or nuisance.

3319. Any person who shall be in a state of intoxication, or shall commit any nuisance or act of indecency in any railway carriage, or upon any part of the premises of any such railway company; or who shall wilfully and without lawful excuse interfere with the comfort of any passenger on such railway; shall be liable to a fine not exceeding twenty rupees; and in addition to such liability the offender may be removed by any of the ser-

vants of the company from any such carriage, and also from the premises of the company, and shall forfeit his fare. Act XVIII. 1854, sect. 7.

3320. If any special carriage, or portion of a carriage, or any private room or apartment, shall be provided by any such railway company for the exclusive use of females, any male person, who without lawful excuse shall enter such carriage, or portion of a carriage, or any such room or apartment, knowing the same to be exclusively appropriated as aforesaid, or shall remain therein after having been informed of its exclusive appropriation, shall be liable to a fine not exceeding one hundred rupees, and may be removed therefrom, and also from the premises of the company, by any of the servants of the company, and shall forfeit his fare. Act XVIII. 1854, sect. 8.

Penalty for entering private room or carriage.

3321. If any person shall fail to pay on demand any sum due to any such railway company for the conveyance of any goods, it shall be lawful for the company to detain all or any part of such goods, or, if the same shall have been removed from the premises of the company, any other goods of such person which shall then be on their premises, or shall thereafter come into their possession; and also to sell by public auction sufficient of such goods to realize the sum payable as aforesaid, and all charges and expenses of such detention and sale, and out of the proceeds of the sale, to retain the sum so payable, together with the charges and expenses aforesaid, rendering the overplus, if any, of the money arising by such sale, and such of the goods as shall remain unsold, to the person entitled thereto; or the company may recover any such sum by action at law. Act XVIII. 1854, sect. 12.

Power of railway company to detain goods.

3322. The owner or person having the care of any goods which shall have been carried upon any such railway, or shall be brought on to the premises of any such railway company for the purpose of being carried on their railway, shall, on demand by any servant of the company appointed to receive goods to be carried on that part of the railway on which such goods shall have been carried, or shall be about to be carried, deliver to such servant an exact account in writing signed by him of the number or quantity and description of such goods. Act XVIII. 1854, sect. 13.

Written account of goods to be given on demand.

3323. If any such owner or person as aforesaid shall wilfully fail to give such account to such servant of the company, or if he shall wilfully give a false account thereof, he shall, for every such offence, be liable to a fine not exceeding fifty rupees for every ton of goods, or for any parcel exceeding one hundred weight; and to a fine not exceeding twenty rupees for any quantity of goods less than a ton or for any parcel less than one hundred weight. Act XVIII. 1854, sect. 14.

Penalty for false account.

3324. No person shall carry upon any such railway any dangerous goods, or be entitled to require any such railway company to carry upon such railway any luggage or goods, which, in the judgment of the company or any of their servants, shall be of a dangerous nature; and if any person shall carry upon such railway any dangerous goods, or shall deliver to such railway company any such goods for the purpose of being carried upon such railway, without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing of the nature thereof to the book-keeper or other servant of the company to whom the same shall be delivered for the

Carriage of goods of a dangerous nature.

purpose of being so carried, he shall be liable to a fine not exceeding two hundred rupees for every such offence; and it shall be lawful for any such company or any of their servants to refuse to carry any luggage or parcel that they may suspect to contain goods of a dangerous nature, and to require the same to be opened to ascertain the fact previously to carrying the same; and in case any such luggage or parcel shall be received by the company for the purpose of being carried on the railway, it shall be lawful for the company or any of their servants to stop the transit thereof, until they shall be satisfied as to the nature of the contents of the baggage or parcel. Act XVIII. 1854, sect. 15.

Penalty for obstructing servant in his duty.

3325. Any person who shall wilfully obstruct or impede any officer or servant of the company in the discharge of his duty on such railway, or any of the works, stations, or premises connected therewith, shall be liable to a fine not exceeding fifty rupees. Act XVIII. 1854, sect. 16.

Penalty for trespass.

3326. Any person who shall trespass upon any such railway, or upon any of the lands, stations, or other premises belonging to the company, shall be liable to a fine not exceeding twenty rupees; and if any such person shall refuse to leave such railway or premises on being requested to do so by any officer or servant of the company, or by any other person on behalf of the company, he shall be liable to a fine not exceeding fifty rupees, and may be immediately removed from such railway or premises by such officer, servant, or other person as aforesaid. Act XVIII. 1854, sect. 17.

Penalty for driving an animal upon or across railway.

3327. Any person who shall wilfully ride, lead, or drive upon or across any such railway any animal, except in directly crossing the said railway at any road or place appointed for that purpose, at a time at which he shall be lawfully authorized so to do, shall be liable to a fine not exceeding fifty rupees for each offence. Act XVIII. 1854, sect. 18.

Precaution if railway crosses road.

3328. If the railway cross any public carriage road on a level, the railway company shall erect, and at all times maintain good and efficient gates, either across the railway, or across the road on each side of the railway where the same shall communicate with the road, and shall employ proper persons to open and shut such gates; if such gates be across the road, they shall be kept constantly closed, except during the time when horses, cattle, carts, or carriages passing along the same shall have to cross the railway, and the gates shall be of such dimensions and so constructed as when closed to fence in the railway, and prevent cattle or horses passing along the road from entering upon the railway. If the gates be across the railway they shall be kept closed, except when engines or carriages passing along the railway shall have occasion to cross the road, and shall be of such dimensions and so constructed as when open to fence in the railway, and prevent cattle, carriages, or passengers from entering upon the railway. Provided that it shall be lawful for the local government in any case to order that the gates shall be across the road or across the railway as the government may think fit, and in such case the gates shall be erected, maintained, and closed accordingly. If any railway company shall wilfully fail to comply with the provision of this section, they shall forfeit a sum not exceeding two hundred rupees for each offence; and any magistrate or justice of the peace may, in case any such gates be not

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Penalty.

erected or maintained, order the company to erect and maintain the same within a time to be specified in the order; and, in case of wilful failure on the part of the railway company to comply with such order, they shall be liable to a fine not exceeding two hundred rupees for every day that they shall wilfully fail so to do. Act XVIII. 1854, section 19.

3329. Every such railway company shall be bound to erect and maintain good and sufficient fences on each side of their railway; or, failing therein, shall be liable to a fine not exceeding fifty rupees for every offence; and it shall be lawful for a magistrate or justice of the peace to order the company to erect or repair any such fence within a time to be specified in the order, and, upon failure of the company to comply with such order, they shall be liable to a fine not exceeding fifty rupees for every day that they fail so to do. Act XVIII. 1854, sect. 20.

Railway to be fenced. Penalty for not fencing.

3330. The owner of any animal which shall trespass or stray upon any such railway, or upon any lands belonging to such railway company, except for want of the erection or maintenance of any fence or gate which the company is bound to erect and maintain, shall be liable to a fine not exceeding ten rupees for each animal; and it shall be lawful for the company, or any of their servants, to take or drive every animal which shall be found so trespassing to the nearest police station, there to be detained until the highest amount of fine incurred by such trespass and the expense of feeding and keeping the animal be paid, or until a magistrate shall otherwise order. A magistrate may, upon proof of the trespass, cause such animal to be sold by public auction, and the proceeds of the sale, after deducting therefrom such fine, or such a sum, not exceeding ten rupees for each animal, as the magistrate shall award to be paid in lieu of the fine to which the owner is hereby made liable, and such further sum as the magistrate shall order to be paid for the expenses of detaining, feeding, and selling such animal, shall be returned to the owner of the animal on demand. Act XVIII. 1854, sect. 21.

Liability of owner of animal trespassing.

3331. Any person who shall unlawfully and wilfully remove or deface the number plates, or remove or extinguish any lamp, on any carriage belonging to any such railway company; or shall wilfully or negligently damage or injure any carriage, engine, waggon, truck, warehouse, building, machine, fence, or any other matter or thing belonging to such railway company, shall be liable to a fine not exceeding fifty rupees. Act XVIII. 1854, sect. 22.

Penalty for injury to carriage, &c.

3332. If any person for whose use or accommodation any gate shall have been set up by any such railway company on either side of such railway, or any other person, shall open such gate, or pass or attempt to pass, or drive or attempt to drive any carriage, cattle, or other animal or thing across the said railway at a time when any engine or train approaching along the same shall be in sight; or shall at any time omit to shut and fasten such gate, as soon as he and any carriage, cattle, or other animal or thing under his charge shall have passed through the same; he shall be liable to a fine not exceeding fifty rupees. Act XVIII. 1854, sect. 23.

Penalty for opening or not properly shutting gates.

3333. If any person shall commit any offence hereby made punishable by fine, and the name and address of such person shall be unknown, or there be reason to believe that

Offender may be apprehended.

the offender will abscond, any officer or servant of the company, or any police officer, or other person whom such officer or servant may call to his aid, may, without any warrant or written authority, lawfully apprehend and detain such offender until he can be taken before a magistrate or other officer having jurisdiction over the offence, or shall give sufficient security for his appearance before such magistrate or other officer, or shall be otherwise discharged by due course of law. Act XVIII. 1854, sect. 24.

Penalty for wilful act or omission endangering a passenger.

3334. Whoever shall wilfully do any act, or shall wilfully omit to do what he is legally bound to do, intending by such act or omission to cause, or knowing that he is thereby likely to cause, the safety of any person travelling or being upon any such railway to be endangered, shall be liable to be transported beyond sea for the term of his life, or to be imprisoned, with or without hard labor, for any term not exceeding seven years. Act XVIII. 1854, sect. 25.

Penalty for wilful act or omission in a railway officer.

3335. If any officer or servant of such railway company shall wilfully do any act which he is legally prohibited from doing, or shall wilfully or negligently omit to do what he is legally bound to do, and if, in consequence of such act or omission, the safety of any person travelling or being upon such railway shall be endangered, such officer or servant shall be liable to be imprisoned, with or without hard labor, for any term not exceeding three years, or to fine, or to both. Act XVIII. 1854, sect. 26.

Penalty for drunkenness or breach of duty by railway officer.

3336. Any officer or servant of such railway company, who shall be in a state of intoxication whilst actually employed upon the railway, or any of the works connected therewith, in the discharge of any duty; and any officer or servant of such company, who negligently shall omit to perform his duty, or shall perform the same in an improper manner, shall be liable to a fine not exceeding fifty rupees; and if the duty in any of the cases in this section above-mentioned be such, that the omission or negligent performance thereof would be likely to endanger the safety of any person travelling or being upon such railway, such officer or servant shall, on conviction before a magistrate, be liable to imprisonment, with or without hard labor, for a term not exceeding one year, or to fine, or both. Act XVIII. 1854, sect. 27.

Penalty for an act not wilful.

3337. If any person shall rashly or negligently, and without lawful excuse, do any act which shall be likely to endanger the safety of any person travelling or being upon such railway, he shall, upon conviction before a magistrate, be liable to imprisonment, with or without hard labor, for a term not exceeding one year, or to a fine, or to both. Act XVIII. 1854, sect. 28.

Rule of construction of this Act.

3338. In the construction of this Act, every officer and servant of such railway company shall be deemed to be legally bound to do every thing necessary for, or conducive to, the safety of the public, which he shall be required to do by any regulation which shall be made by the company, and allowed by the governor general of India in council, and of which regulation such officer or servant shall have notice; and every such officer and servant shall be deemed to be legally prohibited from doing every act which shall be likely to cause danger, and which by any such regulation he shall be prohibited from doing; and every person employed by or on behalf of such railway company to do any act

upon the railway shall be deemed to be a servant of the company. Act XVIII. 1854, sect. 29.

3339. Any person, whether a European British subject or not, who shall be guilty of any offence, for which, according to the provisions of this Act, he shall be liable to a fine only, shall be punishable for such offence by any justice of the peace for any of the presidency towns of Calcutta, Madras, and Bombay, magistrate, joint magistrate, or person lawfully exercising the powers of a magistrate, whether the offence shall have been committed within the local limits of the jurisdiction of such officer or not, and any person hereby made punishable by a justice of the peace, shall be punishable upon summary conviction. Act XVIII. 1854, sect. 30.

Jurisdiction of magistrate, &c. to fine.

3340. No conviction, order, or judgment of any justice of the peace shall be quashed for error of form or procedure, but only on the merits; and it shall not be necessary to state on the face of the conviction, order, or judgment, the evidence on which it proceeds; but the depositions taken, or a copy of them, shall be returned with the conviction, order, or judgment, in obedience to any writ of *certiorari*; and if no jurisdiction appears on the face of the conviction, order, or judgment, but the depositions taken supply that defect, the conviction, order, or judgment shall be aided by what so appears in such deposition. Act XVIII. 1854, sect. 31.

Conviction to be quashed on merits only; form of conviction, &c.

3341. A magistrate may refer for trial and decision any charge of an offence hereby made punishable by fine only to any of his assistants, or to any deputy magistrate lawfully appointed to exercise the powers of a covenanted assistant, and in such case every such assistant, or deputy magistrate, may exercise all the powers vested in a magistrate, subject to all the rules applicable to criminal cases deputed to such assistant or deputy magistrate acting judicially. Act XVIII. 1854, sect. 32.

Magistrate may refer case to his assistant or deputy.

3342. The local government may give general authority to any such assistant or deputy magistrate to exercise, without reference by a magistrate, any of the powers which they are hereby rendered competent to exercise upon reference by a magistrate, subject to appeal to the magistrate from any conviction by such assistant or deputy magistrate, within one month from the date of conviction. Provided that a magistrate may at any time call from any of his assistants, or from any deputy magistrate subordinate to him, any case pending before such assistant or deputy magistrate. Act XVIII. 1854, sect. 33.

Local government may authorize assistant to take up cases without reference.

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3343. All fines imposed under the authority of this Act for offences punishable by fine only by any justice of the peace, magistrate, joint magistrate, or person lawfully exercising the powers of a magistrate, or by any assistant to a magistrate, or deputy magistrate, may, in case of non-payment thereof, be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand of any of the abovenamed officers; and in case any such fine shall not be forthwith paid, any such officer may order the offender to be apprehended and detained in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such officer for his appearance at such place and time as shall be appointed for the return of the warrant of distress, and such officer may take such security by way of recognizance or otherwise;

Fines how to be recovered.

and, if upon the return of such warrant it shall appear that no sufficient distress can be had whereon to levy such fine, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such officer by the confession of the offender or otherwise, that he has not sufficient goods and chattels whereupon such fine or sum of money could be levied if a warrant of distress were issued, any such officer may, by warrant under his hand, commit the offender to prison, there to be imprisoned only, or to be imprisoned and kept to hard labor, according to the discretion of such officer, for any term not exceeding two calendar months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four calendar months when the amount shall not exceed one hundred rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount. Act XVIII. 1854, sect. 34.

Enforcing payment of fare by passenger not producing ticket.

3344. Payment of any fare to which any passenger not producing or delivering up his ticket shall be liable under section I of this Act, may be enforced in the same manner as any fine imposed by this Act. Act XVIII. 1854, sect. 36.

Apprehension of offenders.

3345. Every person who shall be guilty of any offence mentioned in sections 25, 26, 27, and 28, of this Act, may be lawfully apprehended without any warrant or written authority, by any servant or officer of the company, or by any other person whom such officer or servant shall call to his aid, or by any police officer of such grade, as shall by any law in force for the time being be entrusted in any case with the power of arrest without a warrant; and every person so apprehended shall, with all convenient despatch, be carried and conveyed before a magistrate or justice of the peace, or other officer lawfully authorized to punish the offender or to commit him for trial. Act XVIII. 1854, sect. 37.

Construction.

3346. In the construction of this Act, unless where a contrary intention appears from the context, the word "magistrate" shall include a joint magistrate, and any person lawfully exercising the powers of a magistrate; words in the singular number shall include the plural; words in the plural shall include the singular; and words in the masculine gender shall include the feminine; and the word "fine" shall include a sum of money due upon a forfeited recognizance. Act XVIII. 1854, sect. 38.

All Indian railways to be within the Act.

3347. Every railway within the said territories, used for the public conveyance of passengers or goods, shall, until the contrary be proved, be presumed to be a railway within the meaning of this Act, and every company to whom any such railway shall belong, shall, until the contrary be proved, be presumed to be a railway company within the meaning of this Act. Act XVIII. 1854, sect. 40.

Penalty for omitting to report accident.

3348. Every such railway company shall, within forty-eight hours after the occurrence upon the railway belonging to such company of any accident attended with serious personal injury, give notice thereof to the local government; and if any such company omit to give such notice, they shall forfeit the sum of fifty rupees for every day during which the omission to give the same shall continue. Act XVIII. 1854, sect. 41.

Local government may require a return of acci-

3349. The local government may order and direct any such railway company to make up and deliver to them a return of serious accidents occurring in the course of the public

traffic upon the railway belonging to such company, whether attended with personal injury or not, in such form and manner as the government shall deem necessary and require for their information, with a view to the public safety; and if any such returns shall not be so delivered within fourteen days after the same shall have been required, every such company shall forfeit the sum of fifty rupees for every day during which the said company shall neglect to deliver the same. Act XVIII. 1854, sect. 42.

Penalty.

CHAPTER V.

OF OFFENCES AGAINST THE LAWS RELATING TO ELECTRIC TELEGRAPHS.

3350. Within the territories in the possession and under the government of the East India Company, the said East India Company shall have the exclusive privilege of establishing lines of electric telegraph. Provided that the governor general of India in council may grant a license to any person or company to establish a line of electric telegraph within any part of such territories, which license shall be revocable on the breach of any of the conditions therein contained. Act XXXIV. 1854, sect. 1.

The E. I. Company to have the exclusive privilege of establishing electric telegraphs.

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3351. Whoever shall, otherwise than under a license duly granted as aforesaid, establish, or after revocation of such license maintain, a line of electric telegraph within the said territories, shall be liable to a fine not exceeding one thousand rupees, and for every week during which such line shall be maintained shall be liable to a further fine not exceeding five hundred rupees. Act XXXIV. 1854, sect. 2.

Penalties for establishing or maintaining unauthorized electric telegraphs.

3352. Whoever shall use a line of electric telegraph, knowing or having reason to believe that it is an unlicensed line, for the purpose of sending or receiving messages, or shall perform any service incidental thereto, shall, for every such offence, be liable to a fine not exceeding fifty rupees. Act XXXIV. 1854, sect. 3.

Penalty for using or working such telegraphs.

3353. The governor general of India in council may, on the occurrence of any public emergency, take temporary possession of any line of electric telegraph established under license within the said territories. Act XXXIV. 1854, sect. 4.

Government may take possession of telegraphs established by license.

3354. Any railway company, on being required so to do by the governor general of India in council, shall permit the government to establish upon the land of such company adjoining the line of railway a line of electric telegraph, and shall give every reasonable facility for establishing and using the same. Act XXXIV. 1854, sect. 5.

Government may establish telegraph on land of railway company.

3355. The governor general of India in council may from time to time frame rules for the conduct of electric telegraphs established by government not inconsistent with this Act, and therein prescribe the regulations, conditions, and restrictions according to which all messages and signals shall be transmitted. Act XXXIV. 1854, sect. 6.

Governor general in council to frame rules for the conduct of government telegraphs.

Government not responsible for loss or damage.

3356. The government shall not be responsible for any loss or damage which may occur in consequence of any person employed by the government in the electric telegraph department failing to transmit with accuracy any message entrusted to him for transmission ; and no such person shall be responsible for any such loss or damage, unless he shall cause the same negligently, maliciously, or fraudulently. Act XXXIV. 1854, sect. 7.

No person to intrude into a telegraph office.

3357. Whoever shall without permission enter into a government telegraph office, or shall refuse to quit the same on being requested to do so by any officer or servant employed therein, or shall wilfully obstruct or impede any such officer or servant in the performance of his duty, shall be liable to a fine not exceeding one hundred rupees. Act XXXIV. 1854, sect. 8.

Penalties for cutting the line,

3358. Whoever shall wilfully cause or attempt to cause any interruption to the transmission of signals along a line of electric telegraph established by the government, by cutting or injuring the wire, or by injuring any portion of the line, or any instrument or apparatus, or by any other means, shall be liable to be imprisoned, with or without hard labor, for a term not exceeding two years, or to fine, or to both. Act XXXIV. 1854, sect. 9.

Injuring post, &c.

3359. Whoever shall wilfully or negligently damage or injure any post or any portion of the line of such electric telegraph, shall be liable to a fine not exceeding fifty rupees. Act XXXIV. 1854, sect. 10.

Penalties for fraudulently omitting messages or for disclosing secret messages.

3360. Whoever, being in the employ of the government in the electric telegraph department, shall fraudulently or maliciously secrete, make away with, alter, or omit to transmit any message which he may have received for transmission, or shall fraudulently or maliciously disclose any message so received by him and directed to be kept secret, shall be liable to be imprisoned, with or without hard labor, for a term not exceeding two years, or to fine, or to both. Act XXXIV. 1854, sect. 11.

Penalty for misconduct.

3361. Whoever being in such employ shall be guilty of any act of drunkenness, carelessness, or other misconduct, whereby the transmission or delivery of any message shall be endangered, or who shall loiter or make delay in the transmission or delivery of any message, shall be liable to a fine not exceeding one hundred rupees. Act XXXIV. 1854, sect. 12.

Penalty for sending messages without payment to government.

3362. Whoever being in such employ shall transmit by the electric telegraph any message upon which the prescribed charge has not been paid, intending thereby to defraud the government, shall be liable to be imprisoned, with or without hard labor, for a term not exceeding two years, or to fine, or to both. Act XXXIV. 1854, sect. 13.

Penalties for transmission of fabricated messages.

3363. Whoever shall fraudulently or maliciously transmit or cause to be transmitted by an electric telegraph established by government a message which he knows to be false or fabricated, shall be liable to be imprisoned, with or without hard labor, for a term not exceeding two years, or to fine, or to both. Act XXXIV. 1854, sect. 14.

Jurisdiction.

3364. Any person not being a European British subject, who shall, beyond the local limits of the jurisdiction of her majesty's supreme court of judicature, commit any of

the offences mentioned in sections 9, 11, 13, and 14 of this Act, shall be punishable upon conviction by magistrate within whose jurisdiction the offence shall be committed. Act XXXIV. 1854, sect. 15.

3365. Any person, whether a European British subject or not, who shall be guilty of any offence for which, according to the provisions of this Act, he shall be liable to a fine only, shall be punishable for such offence by any justice of the peace for any of the presidency towns of Calcutta, Madras, and Bombay, or for any of the settlements of Prince of Wales' Island, Singapore, and Malacca, magistrate, joint magistrate, or person lawfully exercising the powers of magistrate, within whose jurisdiction the offence shall be committed; and any person hereby made punishable by a justice of the peace shall be punishable upon summary conviction. Act XXXIV. 1854, sect. 16.

Fines how to be recovered.

3366. No conviction, order, or judgment of any justice of the peace shall be quashed for error of form or procedure, but only on the merits; and it shall not be necessary to state on the face of the conviction, order, or judgment, the evidence on which it proceeds: but the depositions taken, or a copy of them, shall be returned with the conviction, order, or judgment, in obedience to any writ of *certiorari*; and, if no jurisdiction appears on the face of the conviction, order, or judgment, but the depositions taken supply that defect, the conviction, order, or judgment shall be aided by what so appears in such depositions. Act XXXIV. 1854, sect. 17.

Conviction to be quashed on merits only; form of conviction, &c.

3367. A magistrate may refer for trial and decision any charge of an offence hereby made punishable by fine only, to any of his assistants, or to any deputy magistrate lawfully appointed to exercise the powers of a covenanted assistant; and in such case every such assistant or deputy magistrate may exercise all the powers vested in a magistrate, subject to all the rules applicable to criminal cases deputed to such assistants or deputy magistrates acting judicially. Act XXXIV. 1854, sect. 18.

Magistrate may refer charge to his assistants.

3368. The local government may give general authority to any such assistant or deputy magistrate to exercise, without reference by a magistrate, any of the powers which they are hereby rendered competent to exercise upon reference by a magistrate, subject to appeal to the magistrate from any conviction by such assistant, or deputy magistrate, within one month from the date of the conviction. Provided that a magistrate may at any time call from any of his assistants, or from any deputy magistrate subordinate to him, any case pending before such assistant or deputy magistrate. Act XXXIV. 1854, sect. 19.

Government may authorize assistant and deputy magistrates to exercise certain powers.

3369. All fines imposed under the authority of this Act, for offences punishable by fine only, by any justice of the peace, magistrate, joint magistrate, or person lawfully exercising the powers of a magistrate, or by any assistant to a magistrate, or deputy magistrate, may, in case of non-payment thereof, be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand of any of the above-named officers; and in case any such fine shall not be forthwith paid, any such officer may order the offender to be apprehended and detained in safe custody until the return can be conveniently made to such warrant of distress, unless such party shall give security to the satisfaction of such

Fines how to be levied.

Imprisonment, if
no sufficient dis-
tress, &c.

officer for his appearance at such place and time as shall be appointed for the return of the warrant of distress, and such officer may take such security by way of recognizance or otherwise; and if, upon the return of such warrant, it shall appear that no sufficient distress can be had whereon to levy such fine, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such officer, by the confession of the party or otherwise, that he has not sufficient goods and chattels whereupon such fine or sum of money could be levied if a warrant of distress were issued, any such officer by warrant under his hand may commit the offender to prison, there to be imprisoned only, or to be imprisoned and kept to hard labor, according to the discretion of such officer, for any term not exceeding two calendar months where the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four calendar months where the amount shall not exceed one hundred rupees, and for any term not exceeding six calendar months in any other case; the commitment to be determinable in each of the cases aforesaid on payment of the amount. Act XXXIV. 1854, sect. 20.

Authority to pun-
ish servants of the
East India Com-
pany who commit
offences against
this Act in a foreign
territory.

3370. If any servant of the East India Company, employed in the electric telegraph department within the dominions of any foreign prince or state in alliance with the said Company, in which an electric telegraph is established by the said Company, shall, within the dominions of such prince or state, commit any act hereby prohibited, or omit to do any act hereby required to be done by any person similarly employed within the territories under the government of the said Company, such servant of the said Company shall be guilty of an offence, and on conviction thereof shall be punished in the same manner as if such act had been done or omitted within the said last mentioned territories; and every such person may be tried, convicted, and punished either by fine or otherwise, according to the nature of the offence, by any court or officer duly empowered by the governor general of India in council to take cognizance of offences committed in such dominions by servants of the East India Company, or by any court or magistrate or other competent officer in any part of the territories within the government of the East India Company, in the same manner as if the offence had been committed in such part of the said territories. Act XXXIV. 1854, sect. 21.

Explanation of
terms.

3371. The word "magistrate" in this Act shall include joint magistrates and persons lawfully exercising the powers of magistrates; and the word "fine" shall include a penalty or forfeiture. Act XXXIV. 1854, sect. 22.

Government to
frame rules for tele-
graphs established
by license.

3372. It shall be lawful for the governor general in council to frame rules for the conduct of any electric telegraph established by license under this Act and to declare from time to time what portions of this Act shall be applicable to such telegraph and to persons using the same or employed in connection therewith. Act XXXIV. 1854, sect. 23.

CHAPTER VI.

OF OFFENCES AGAINST THE ABKAREE REVENUE LAWS.

3373. It shall not be lawful for any person to construct or work a distillery after the manner in which distilleries are constructed and worked in England, without a license under the signature of the collector of the district in which such distillery is situated; or, in case the distillery is within twenty miles of Calcutta, or such other distance less than twenty miles as may from time to time be prescribed by the lieutenant-governor of Bengal, under the signature of the collector of Calcutta. Act XXI. 1856, sect. 5.

English distilleries not to be constructed or worked without license.

3374. The board of revenue, with the sanction of government, may prescribe such rules relative to the granting of licenses under the preceding section, to the notices to be given by the proprietor of a licensed distillery when he commences and discontinues work, to the size and description of the stills, to the passing and storing of the spirits, to the inspection and examination of the distillery and warehouses and of the spirits manufactured and stored therein, and to the furnishing of statements and lists of such spirits, and of the stills, coppers, casks, and other utensils used in the distillery, as may from time to time be judged expedient. Act XXI. 1856, sect. 6.

Board of revenue to prescribe rules for regulating English distilleries.

3375. A duty shall be levied on spirits manufactured at distilleries worked according to the English method at the rate of one rupee the imperial gallon of the strength of London-proof, to be augmented or reduced in proportion to the strength of the spirit. No spirits shall be removed from any such distillery, or the warehouses connected therewith, upon which the aforesaid duty has not been paid, or for the duty chargeable on which a bond has not been executed as hereinafter provided; and for all spirits removed upon payment of duty or under bond passes shall be issued by the collector, which shall specify the quantity and strength of the spirit, the place of its destination, the person to whom it is consigned, and whether the duty has been paid or secured by bond. Act XXI. 1856, sect. 7.

Rate of duty to be levied on spirits.

3376. Spirits may be removed from any licensed distillery for exportation as aforesaid without payment of duty, under such rules and restrictions as may be from time to time prescribed by the board of revenue, on the person removing them executing a bond, with one or more sureties, to the East India Company, in prescribed form, for the payment of the prescribed duty upon such portion of the said spirits as may not be exported within four months from the date of the bond. Provided, however, that it shall be lawful for the collector, with the sanction of the commissioner, on sufficient cause shown, to extend the period allowed for the exportation of the spirits for a further term of four months. Act XXI. 1856, sect. 9.

Spirits may be removed for exportation under bond.

3377. Spirits under bond shall be taken from the distillery direct to the custom house, under passes to be granted for that purpose by the collector. Act XXI. 1856, sect. 10.

To be taken direct to custom house.

Spirits intended for exportation may be removed for local consumption.

3378. Spirits brought to the custom house under bond for exportation may nevertheless be removed for local consumption, under passes to be granted for that purpose by the collector of revenue, upon payment of the prescribed duty on the quantity so removed; and credit for such payment shall be given on the settlement of the bond. Act XXI. 1856, sect. 12.

Spirits shipped for exportation not to be re-landed.

3379. Spirits shipped for exportation shall not be re-landed without a special pass from the collector of revenue in addition to the usual order of the collector of customs. Act XXI. 1856, sect. 14.

Rum shrub, &c., how to be charged with duty;—may be exported under the same rules as spirits.

3380. Rum shrub, cordials, and other liquors, prepared in a licensed distillery under the supervision of the surveyor or officer in charge of the distillery, shall be charged with duty according to the quantity of spirit used in the preparation; and all the provisions contained in this Act respecting spirits manufactured after the English method, except such as relate to gauge and proof, shall be applicable to such liquors. Act XXI. 1856, sect. 16.

Penalty for constructing or working a distillery or collecting materials without license.

3381. Every person who shall construct or work a distillery after the English method, without a license from the collector, shall forfeit for every such offence a sum not exceeding one thousand rupees; and all spirits manufactured at any such distillery, and all materials and implements collected for the purpose of such manufacture, shall be liable to confiscation. Act XXI. 1856, sect. 18.

Penalty for non-observance of rules prescribed by board of revenue.

3382. Every proprietor or manager of a licensed distillery constructed and worked after the English method, who shall omit to furnish any notice or any statement or list required by the rules prescribed by the board of revenue under section 6 of this Act, or shall wilfully do any thing in contravention of the said rules, shall forfeit for every such offence a sum not exceeding two hundred rupees; and, if any such offence be committed a second time with respect to the same distillery, the license granted for the working of such distillery may be withdrawn by the collector. Act XXI. 1856, sect. 19.

Penalty for removing spirituous liquors without payment of duty

3383. Every person who shall remove, or attempt to remove, from any licensed distillery constructed and worked after the English method, any spirituous liquors upon which the duty has not been paid, or for the duty on which a bond has not been executed, or any spirituous liquors for which a pass has not been issued by the collector, shall forfeit for every such offence a sum not exceeding one thousand rupees; and the liquors, together with the vessels containing the same and the animals and conveyances used in carrying them, shall be liable to confiscation. If it shall appear to the collector that the offence was committed with the consent or knowledge of the proprietor or manager, the license granted for the construction and working of the distillery from which such liquors have been removed or attempted to be removed may be withdrawn. Act XXI. 1856, sect. 20.

Penalty for irregular re-land of spirituous liquors.

3384. Every person who shall re-land, or attempt to re-land, any spirituous liquors shipped for exportation, without a special pass from the collector of revenue at the place of exportation, shall forfeit for every such offence a sum not exceeding five hundred rupees; and the liquors, together with the casks and vessels containing the same, and the carts, boats, and animals employed in carrying them, shall be liable to confiscation. Act XXI. 1856, sect. 21.

3385. Spirituous liquors manufactured at the foreign settlement of Chandernagore, or at any other place in India beyond the limits of the Company's territories, shall, on passing the limits of the Company's territories subject to this Act, be charged with the duty prescribed for proof spirits in section 7 of this Act: and any person who may be found in possession of any such liquors, without a pass from the collector certifying the payment of such duty, shall forfeit for every such offence a sum not exceeding two hundred rupees; and the liquors, together with the vessels containing the same, and the animals and conveyances used in carrying them, shall be liable to confiscation. Act XXI. 1856, sect. 22.

Spirits from foreign territory subject to duty.

3386. It shall not be lawful for any person to construct or work a brewery, or to manufacture any description of malt liquor, without a license from the collector of the district. The board of revenue, with the sanction of government, may prescribe such rules relative to the granting of licenses for constructing and working breweries as may from time to time be judged expedient. Act XXI. 1856, sect. 23.

Construction or working of breweries and manufacture of malt liquor, without license, prohibited.

3387. Every person who shall construct or work a brewery, or manufacture malt liquor, without a license, shall forfeit for every such offence a sum not exceeding five hundred rupees. Act XXI. 1856, sect. 24.

Penalty.

3388. Spirituous liquors passed from distilleries worked according to the English method, fermented liquors manufactured at a licensed brewery, and spirituous and fermented liquors imported either by land or by sea, shall not be sold except under license from the collector. Act XXI. 1856, sect. 25.

Spirituous and fermented liquors not to be sold without license.

3389. Persons taking out licenses for the wholesale vend of spirituous and fermented liquors as aforesaid shall pay, for every such license, the sum of sixteen rupees. The license shall be current only during the official year, and in the district in which it is granted. But travelling merchants may obtain a general license, authorizing them to sell by wholesale, in any district which they may visit in the course of their travel, without taking out a fresh license for that district, under such rules and restrictions as may be from time to time prescribed by the board of revenue. Act XXI. 1856, sect. 26.

Fee for wholesale license.

3390. Persons taking out licenses for the retail sale of spirituous and fermented liquors as aforesaid shall pay for every such license such fee or tax as may be fixed by the board of revenue; and such fee or tax shall be payable at such periods as the said board may direct. Provided that such fee or tax shall be at such rate for each license as shall not exceed the total sum of one hundred rupees for the whole year. Any sale of spirituous or fermented liquors as aforesaid, in less quantity than two imperial gallons or one dozen of quart bottles, shall be held to be a retail sale. Act XXI. 1856, sect. 27.

Fee for retail license.

What to be held a retail sale.

3391. It shall not be lawful for any person to manufacture spirits after the native process, nor to sell such spirits, or taree, or puchwyc, or ganjah, bhang, churrus, opium, or any preparation or admixture of the same, except under license from the collector. Act XXI. 1856, sect. 28.

Country spirits, liquors, and drugs not to be sold without license.

3392. All the provisions relating to the sale or possession of fermented liquors contained in the following sections of this Act, shall be held applicable to the sale or possession

Taree to be held to be a fermented

of taree, whether in a fermented state or otherwise ; and all taree, both fresh and fermented, shall be held to be included in the expression "fermented liquors" as used in the following sections of this Act. Act XXI. 1856, sect. 29.

Proviso.

3393. Provided, however, that it shall be lawful for government, on the report of the the board of revenue, to pass an order suspending the operation of all the provisions relating to taree, contained in this Act, with respect to any district in which the consumption of taree in a fermented state is inconsiderable ; and, after the passing of any such order, it shall be lawful for taree to be possessed and sold without license in any such district, notwithstanding any thing contained in this Act. Act XXI. 1856, sect. 30.

Collectors may establish distilleries for country spirits.

3394. The collector, with the sanction of the board of revenue, may establish, at any place within his jurisdiction, a distillery in which spirits may be manufactured after the native process ; and may from time to time fix limits within which no country spirits, except such as are manufactured at the said distillery, shall be introduced or sold without a special pass from the collector, and within which no stills shall be constructed or worked, or spirits manufactured, except at the said distillery. He may also, with the like sanction, discontinue any distillery so established, whenever its discontinuance may appear to be expedient. Act XXI. 1856, sect. 31.

Board may prescribe rules for distilleries.

3395. The board of revenue may prescribe such rules relative to the management of distilleries established under the last preceding section, to the conditions on which spirits may be manufactured in the said distilleries, and to the passes to be issued for the conveyance of such spirits to the shops of the vendors, as may from time to time be judged expedient. Act XXI. 1856, sect. 32.

and regulate the mode of supplying taree and intoxicating drugs to the licensed vendors thereof.

3396. The board of revenue may regulate the mode in which taree shall be supplied to licensed vendors of the same ; and may frame rules for the grant of licenses or passes to persons purchasing, transporting, or storing ganjah, bhang, or churrus for the supply of the licensed vendors of those drugs. They may also place the cultivation, preparation, and store of the intoxicating drugs above-mentioned under such supervision as may be deemed necessary to secure the duty leviable thereon. Act XXI. 1856, sect. 33.

Sale of more than specified quantities of country spirits, &c. prohibited.

3397. Except for the supply of licensed vendors, country spirits, taree, and puchwye, and intoxicating drugs, shall not be sold in larger quantities than are hereunder specified—namely, country spirits, one seer ; taree or puchwye, four seers ; ganjah or bhang, or any preparation or admixture of the same, one quarter of a seer ; churrus or opium, or any preparation or admixture of the same, five tolahs weight : and the sale of any such quantity as is herein allowed shall be deemed to be a retail sale within the meaning of this Act. Act XXI. 1856, sect. 35.

Licensed retail vendors of country spirits to furnish security.

3398. Every person taking out a license for the manufacture of county spirits, or for the retail sale of spirituous or fermented liquors, or intoxicating drugs, shall execute a counterpart engagement in conformity with the tenor of the license, and shall give such security for the performance of his engagement or make such deposit in lieu of security, as the collector may require. Act XXI. 1856, sect. 37.

3399. The board of revenue shall have authority to regulate the form and conditions of all licenses granted under this Act. Act XXI. 1856, sect. 39.

Board to regulate form of license.

3400. Every person licensed to manufacture country spirits, or to sell spirituous or fermented liquors or intoxicating drugs, who shall not produce his license on the demand of any abkaree officer, or who shall commit any act in breach of any of the conditions of his license not otherwise provided for in this Act, shall forfeit for every such offence a sum not exceeding fifty rupees. Act XXI. 1856, sect. 43.

Penalty for refusing to produce license on demand of abkaree officer, or for breach of license

3401. Every licensed retail vendor, who shall sell any larger quantity of spirituous or fermented liquors, or intoxicating drugs, than is allowed to be sold by retail by the provisions of this Act, and every licensed wholesale vendor who shall make a retail sale, shall forfeit for every such offence a sum not exceeding two hundred rupees. Provided always, that nothing in this section shall be held to prohibit the grant to the same person of both wholesale and retail licenses, subject to the provisions of this Act. Act XXI. 1856, sect. 44.

Penalty for sale in contravention of license.

Proviso.

3402. Every person licensed to sell spirituous or fermented liquors, or intoxicating drugs, who shall permit drunkenness, riot, or gaming in his shop, or shall permit persons of notoriously bad character to meet or remain therein, or shall receive any wearing apparel or other effects in barter for liquors or drugs, shall forfeit for every such offence a sum not exceeding 200 rupees. Act XXI. 1856, sect. 45.

Penalty for permitting drunkenness, &c., in shop.

3403. The licensed vendors of spirits and drugs are bound, by the conditions of their licenses, not to harbour robbers, thieves, or riotous persons, nor to receive any goods or wearing apparel in barter for liquors or drugs; they are also bound not to open their shops before sun-rise, nor to keep them open after sun-set; and are enjoined not to harbour any person in their shops during the night, but to give information to the nearest magistrate or police officer of any suspected persons who resort to their shops. Reg. XX. 1817, sect. 28, cl. 4.

Licensed vendors not to harbour robbers, &c., nor to keep their shops open between sun-set and sunrise; nor to harbour persons at night.

3404. The daregahs of police are enjoined to report to the magistrate any breach of the foregoing conditions which come to their knowledge. They are also to proceed against any licensed vendor of spirits or drugs, who is charged with a criminal offence cognizable by them, according to the general rules in force, which are applicable to the charge. Reg. XX. 1817, sect. 28, cl. 5.

Police officers to report any breach of the above rules.

3405. Every person who shall convey or attempt to convey any country spirits from a distillery established under section 31 of this Act without a pass, or exceeding the quantity for which a pass shall have been granted, or shall introduce or attempt to introduce any country spirits manufactured at another place into the limits fixed for the consumption of spirits manufactured at such distillery, without a special pass from the collector, shall forfeit for every such offence a sum not exceeding five hundred rupees. Act XXI. 1856, sect. 46.

Penalty for conveying country spirits from distillery without pass, &c.

3406. Every person who shall wilfully contravene any rule prescribed by the board of revenue for the management of a distillery established as aforesaid, otherwise than as

Penalty for contravention of rules prescribed by the board of revenue.

provided for in the last preceding section, shall forfeit for every such offence a sum not exceeding fifty rupees. Act XXI. 1856, sect. 47.

Penalty for illicit manufacture or sale of country spirits, &c.

3407. Every person other than a licensed manufacturer, who shall manufacture any country spirits; and every person other than a licensed vendor, or a person duly authorized to supply licensed vendors, who shall sell any spirituous or fermented liquors, or intoxicating drugs; and every person authorized to supply licensed vendors, who shall sell such any liquors or drugs to any person other than a licensed vendor; shall forfeit for every such offence a sum not exceeding five hundred rupees. Provided always, that nothing in this section, or in section 25, shall apply to the sale by auction of any spirituous liquors, wines, or beer, purchased by any person for his private use and so disposed of upon such person quitting a station or after his decease. Act XXI. 1856, sect. 48.

Proviso.

Penalty for illegal possession of country spirits, &c.

3408. Every person, other than a licensed manufacturer or vendor, or a person duly authorized to supply licensed vendors, who shall have in his possession any larger quantity of country spirits, or taree, or puchwey, or intoxicating drugs, except opium, than may legally be sold by retail under the provisions of section 35 of this Act, or shall transport by land or by water, or have in his possession, any spirituous liquors made at a distillery worked according to the English method, or any imported spirituous or fermented liquors, in larger quantity than two gallons, without a pass from the collector or other officer duly empowered in that behalf, shall forfeit for every such offence a sum not exceeding two hundred rupees; and the liquors and drugs, together with the vessels, packages, and coverings in which they are found, and the animals and conveyances used in carrying them, shall be liable to confiscation. Provided always, that nothing in this section shall extend to any spirituous liquors, wines, or beer, purchased by any person for his private use and not for sale. Act XXI. 1856, sect. 49.

Proviso.

Provisions of the two last preceding sections not to apply to the sale and possession of taree when supplied to sugar manufacturers nor to the sale and possession of ganjah and bhang by cultivators.

Cultivators of ganjah or bhang to sell only to licensed persons.

3409. The provisions of the two last preceding sections, so far as they relate to the sale and possession of fermented liquors, shall not be held applicable to the sale and possession of taree, the produce of the date tree, when supplied or used for the manufacture of goor or molasses; and the provisions of the said sections, relating to the sale and possession of intoxicating drugs, shall not be held applicable to the sale and possession of ganjah or bhang by the cultivators of the plants which produce those drugs respectively. But such cultivators are prohibited from selling any ganjah or bhang to any one other than a licensed vendor, or a person duly authorized to purchase by pass or license from the collector; and every such cultivator who shall act in breach of this prohibition, shall forfeit for every such offence a sum not exceeding five hundred rupees. Act XXI. 1856, sect. 50.

Penalty for having in possession a greater quantity of opium than five tolahs weight.

3410. Every person, other than a licensed vendor, who shall have in his possession a greater quantity of opium than five tolahs weight, shall forfeit for every such offence a sum not exceeding five hundred rupees, unless the opium found in the possession of such person shall exceed the weight of thirty-one seers and a quarter, in which case the penalty may be increased at a rate not exceeding sixteen rupees the seer for all the opium so found in excess of that weight; and the opium, together with the vessels, packages, and coverings in which

it is found, and the animals and conveyances used in carrying it, shall be liable to confiscation. Act XXI. 1856, sect. 51.

3411. Provided always, that nothing in the last preceding section shall extend to the persons and circumstances hereinafter specified, namely:—1. Authorized opium cultivators having newly extracted opium in their possession during the usual period between the full growth of the poppy, and the delivery of the produce to the opium agent. 2. Travellers and visitants from foreign states or countries having in their possession any quantity of foreign opium not exceeding two seers, the produce of such states and countries, and intended for the private use of such travellers and visitants, or their attendants, and not for sale or traffic. 3. Dealers in horses travelling with strings of horses from beyond the South-West frontier of the territory under the government of the lieutenant-governor of the North-Western Provinces, and having in their possession opium, the produce of foreign states or countries, not exceeding in quantity the proportion of ten tolahs weight for each horse. If opium be found in the possession of any traveller or visitant, or any dealer in horses as aforesaid, in excess of the quantities above specified, such excess shall be liable to confiscation, but the persons in whose possession it may be found shall not be subject to any further penalty. Act XXI. 1856, sect. 52.

Exception in favor of—
opium cultivators;

travellers,

and horse dealers.

Penalty for possession of excessive quantity of opium by travellers, &c.

3412. Every licensed vendor, who shall sell or offer for sale opium adulterated with any foreign substance, not being a preparation or admixture of opium for the sale of which such vendor may have taken out a license; or, except in districts exempted from the operation of section 34, shall sell or have in his possession any opium other than the opium supplied to him from the government stores; shall forfeit for every such offence a sum not exceeding five hundred rupees, and the license held by him shall be withdrawn, and the opium, together with the vessels or packages in which it is found, shall be seized, and confiscated. Act XXI. 1856, sect. 53.

Penalties for sale of adulterated opium, &c., by licensed vendors.

3413. Every proprietor, farmer, tuhseeldar, gomashlah, or other manager of land, who shall authorize or connive at the manufacture of country spirits or the sale of spirituous or fermented liquors or intoxicating drugs by any unlicensed person, shall forfeit for every such offence a sum not exceeding five hundred rupees. Act XXI. 1856, sect. 54.

Penalty for conniving at the illicit manufacture or sale of spirits, &c.

3414. Any abkaree officer may enter and inspect at any time by day or by night the shop or premises in which any licensed manufacturer or retail vendor shall carry on the manufacture of country spirits, or the sale of spirituous or fermented liquors, or intoxicating drugs. Act XXI. 1856, sect. 55.

Power of abkaree officers to inspect shops;

3415. Any abkaree officer may stop and detain any person carrying any spirituous or fermented liquors or intoxicating drugs liable to confiscation under this Act; and may seize the liquors or drugs with the vessels, packages, or coverings in which they are contained, and the animals and conveyances used in carrying them; and may also arrest the person in whose possession such liquors or drugs are found. Act XXI. 1856, sect. 56.

and to arrest persons carrying spirits, &c., liable to confiscation;

3416. Any abkaree officer above the rank of jemadar of peons may arrest any person having in his possession an unlicensed still, or any spirituous or fermented liquors, or in-

and to arrest unlicensed distillers, &c.

toxicating drugs, liable to confiscation under this Act, or engaged in the unlawful sale of spirituous or fermented liquors, or intoxicating drugs, and may seize such still with the materials for working it, and all such liquors and drugs. Act XXI. 1856, sect. 57.

Power of abkaree officers to search on information of illicit manufacture or possession.

3417. Whenever any abkaree officer above the rank of a jemadar of peons, shall have good reason to believe, from information given by any person, which information shall be taken down in writing, that spirits are unlawfully manufactured, or that any spirituous or fermented liquors, or intoxicating drugs liable to confiscation under this Act, are kept or concealed in any house, boat, or other place, such officer may, between sunrise and sunset, but always in the presence of a darogah or other officer of police not being under the grade of a jemadar, enter into any such house, boat, or place, and in case of resistance may break open any door, and force and remove any other obstacle to such entry; and may seize and carry away all stills and materials used in the manufacture of such spirits, and all such liquors and drugs; and may also arrest the occupier of the house, boat, or place with all other persons concerned in the manufacture of such spirits, or in the keeping and concealing of such liquors or drugs. Act XXI. 1856, sect. 58.

Officers of the police, customs, and revenue departments may be vested with same powers as abkaree officers.

3418. The powers of seizure, search, and arrest, given to abkaree officers by the three last preceding sections, shall, in regard to the seizure and search for contraband opium and the arrest of persons found in possession thereof, be vested also in the officers of the police, customs, and revenue departments according to their respective grades. And it shall further be lawful for the government to invest the officers of those departments, or of any of them, with the like powers with respect to the seizure of, and search for, spirituous and fermented liquors and intoxicating drugs of every description, and the arrest of persons found in possession of them; and all such officers when so empowered, as well as all police, customs, and revenue officers when acting under the authority conferred by this section for the suppression of illicit dealings in opium, shall be held and deemed to be abkaree officers within the meaning of this Act. Act XXI. 1856, sect. 59.

Abkaree officer to report every arrest, seizure, or search to his official superior, and to take the person arrested to the magistrate for trial, &c.

3419. Whenever an abkaree officer shall arrest any person, or seize any still, or any liquors or drugs liable to confiscation under this Act, or enter any house, boat, or place for the purpose of searching for any such illicit articles, he shall, within twenty-four hours thereafter, make a full report of all the particulars of such arrest, or seizure, or search, to his official superior, and unless acting under the warrant of the collector, shall carry the person arrested, or the illicit article seized, with all convenient despatch, to the magistrate for trial or adjudication. Act XXI. 1856, sect. 60.

Collector may issue warrant of arrest in certain cases.

3420. The collector may issue his warrant for the arrest of any person whom he may have reason to believe, either from information in writing, or from the proceedings in any other case, to be engaged in the unlawful sale of spirituous or fermented liquors or intoxicating drugs, or to have in his possession any such liquors or drugs liable to confiscation under this Act. Act XXI. 1856, sect. 61.

Collector may issue search-warrant.

3421. The collector may issue his warrant for the search of any house, boat, or other place, in which, upon any of the grounds mentioned in the last preceding section, he may have reason to believe that spirits are unlawfully manufactured, or that spirituous or fermented

liquors or intoxicating drugs, liable to confiscation under this Act, are kept or concealed; and such warrant may be executed by any officer above the rank of a jemadar of peons, in the manner prescribed in section 58 of this Act. Act XXI. 1856, sect. 62.

3422. Whenever any person is arrested, or any articles are seized under the warrant of a collector, the collector, after such enquiry as he thinks necessary, shall send the person arrested or the articles seized to the magistrate, or shall order the immediate discharge of such person or the release of such articles. Act XXI. 1856, sect. 63.

Procedure after arrest or seizure.

3423. Every person who shall obstruct or resist any abkaree officer in the due execution of this Act, or of any rules prescribed under the authority thereof, shall forfeit for such offence a sum not exceeding five hundred rupees. Act XXI. 1856, sect. 64.

Penalty for obstructing abkaree officers.

3424. Darogahs of police are to support the officers of the abkaree mahal in the execution of search warrants, issued under the seal and signature of the collector, for the discovery of unlicensed stills, or of the produce of such stills. Such search warrants are to be executed only in the day time, that is, between sun-rise and sun-set; and, if possible, in the presence of two or more respectable inhabitants of the village in which the house or place proposed to be searched may be situated. In the execution of such warrants, the apartments of the women, in houses belonging to persons of respectability and credit, that is, of all those classes whose women do not ordinarily appear in public, are not to be entered by the collector's officers, or by the officers of the police. Reg. XX. 1817, sect. 28, cl. 2 and 3.

Police officers to support abkaree officers in search.

Warrants how to be executed.

Zennas of respectable persons not to be entered.

3425. All police officers are required to aid the abkaree officers in the due execution of this Act, upon notice given or request made by such officers; and any police officer who, without lawful excuse, shall neglect or refuse to assist as aforesaid, and any darogah or other officer in charge of a police station, who, on application made by an abkaree officer under section 58 of this Act, shall fail to attend a search himself, or to depute a subordinate officer not being below the grade of a jemadar, shall forfeit for such offence a sum not exceeding five hundred rupees. Act XXI. 1856, sect. 65.

Police officers to assist abkaree officers.

Penalty.

3426. Whenever an officer on a collector's establishment, duly authorized to distrain property on account of arrears of revenue, due from any manufacturer or vendor of spirituous liquors, taree, puchwye, or intoxicating drugs, including opium, is resisted in the enforcement of the collector's process, he is, on certifying such resistance on oath before a darogah of police, to receive the aid of the regular police officers of the thana in effecting the attachment; and the police officers are to be guided in their proceedings in regard to entering and searching houses for property, belonging to defaulters, by the rules prescribed in this regulation for their conduct in cases of distraint for arrears of land rent,* as far as the same are applicable. Reg. XX. 1817, sect. 28, cl. 1.

Abkaree officers are to be supported by regular police officers in distraining property of abkars, &c.

* v. para. 1686 et seq.

3427. Every person who shall maliciously give false information against any person as being engaged in the unlawful manufacture of spirits, or as selling or having in his possession any spirituous or fermented liquors or intoxicating drugs in contravention of this Act, and so procure that such person be arrested, or that any house, boat, or other place be searched, to the injury or annoyance of such person, or any other person whatsoever, shall

Penalty for maliciously giving false information.

forfeit for such offence a sum not exceeding five hundred rupees, which sum, or any portion thereof, may be paid to the person aggrieved, and shall be further liable to imprisonment for a period not exceeding six months. Act XXI. 1856, sect. 66.

Penalty for vexatious search or seizure.

3428. Any abkaree officer, who shall, without reasonable ground of suspicion, search or cause to be searched any house, boat, or other place, or shall vexatiously and unnecessarily seize the goods or chattels of any person, on the pretence of seizing or searching for any spirituous liquors or intoxicating drugs liable to confiscation under this Act, or shall vexatiously and unnecessarily arrest any person, or commit any other excess not required for the execution of his duty, shall forfeit for such offence a sum not exceeding five hundred rupees, which sum, or any portion thereof, may be paid to the person aggrieved. Act XXI. 1856, sect. 67.

Penalty on abkaree officers for delay in reporting arrest, &c., or in carrying person arrested to magistrate or collector.

3429. Any abkaree officer who shall neglect to report the particulars of an arrest, seizure, or search within twenty-four hours thereafter, or shall delay carrying to the magistrate or collector, as the case may be, any person arrested, or any illicit articles seized under this Act, shall forfeit for such offence a sum not exceeding two hundred rupees. Act XXI. 1856, sect. 68.

Penalty for conniving at escape of persons arrested, &c.

3430. Any abkaree officer who shall unlawfully release or connive at the escape of any person arrested under this Act, or connive at the manufacture of spirits or the sale of spirituous or fermented liquors or intoxicating drugs by any unlicensed person, or by any licensed person contrary to the terms of his license, or act in a manner inconsistent with his duty, for the purpose of enabling any person to do anything whereby any of the provisions of this Act may be evaded or broken, or the abkaree revenue defrauded; and any darogah of police or other officer invested with local jurisdiction, who shall authorize or connive at the establishment of any unlicensed shop for the sale of such liquors or drugs as aforesaid in any place subject to his control, shall forfeit for such offence a sum not exceeding five hundred rupees. Act XXI. 1856, sect. 69.

Penalty for asking or taking gratuities.

3431. Any abkaree officer who shall ask or take any unauthorized gratuity in consideration of doing or omitting to do any act in his official capacity, shall forfeit for such offence a sum not exceeding five hundred rupees. Act XXI. 1856, sect. 70.

Adjudication of penalties and seizures.

3432. All forfeitures and penalties prescribed for offences against the provisions of this Act, and all seizures of goods declared liable to confiscation under this Act, shall be adjudged by the magistrate on the information of the collector or any abkaree officer. Provided that no such information shall be necessary in any case of complaint preferred to a magistrate under any of the seven last preceding sections or under section 45. Act XXI. 1856, sect. 71.

Procedure in cases other than those of persons sent in custody by a collector or abkaree officer.

3433. In all cases in which a complaint or information is preferred to a magistrate of offences committed against this Act, not being cases in which persons are sent in custody by a collector or abkaree officer, the magistrate shall issue a summons requiring the attendance of the person accused. The rules contained in the regulations And acts in force, for the trial of cases before a magistrate, and for appeal against orders passed by a magistrate,

shall be applicable to trials under this Act. Provided that no complaint or information of an offence against this Act shall be admitted, unless it be preferred within the period of six months after the commission of the offence to which the complaint or information refers. Act XXI. 1856, sect. 72.

3434. Whenever any person shall be convicted of an offence against this Act, after having been previously convicted of a like offence, he shall be liable, in addition to the penalty attached to such offence, to imprisonment for a period not exceeding six months; and a like punishment of imprisonment not exceeding six months shall be incurred, in addition to the punishment which may be inflicted for a first offence, upon every subsequent conviction after the second. Act XXI. 1856, sect. 73.

Punishment on second or subsequent conviction.

3435. Every person who shall be imprisoned under the last preceding section, or on account of the non-payment of any sum forfeited under this Act, if the offence of which he has been convicted be one with respect to which the information of the collector or an abkaree officer is required by section 71, shall be confined in the civil jail. Act XXI. 1856, sect. 74.

Confinement in civil jail.

3436. All goods and chattels adjudged to confiscation, except opium, shall be disposed of by the collector by public sale. Opium seized and confiscated shall be sent for examination to the civil surgeon of the station, and, if declared by him to be fit for use, shall be transmitted to the government factories, or otherwise disposed of in such manner as the board of revenue shall direct. If declared to be unfit for use, it shall be immediately destroyed. Act XXI. 1856, sect. 75.

Disposal of confiscated goods.

3437. One half of all fines and forfeitures levied from persons convicted of the unlawful manufacture of spirits, or of the unlawful sale or possession of spirituous or fermented liquors or intoxicating drugs; and one half of the proceeds from sale of all confiscated articles except opium, and, in the case of opium confiscated and declared by the civil surgeon to be fit for use, a reward of one rupee eight annas for each seer; shall, upon adjudication of the case, be awarded to the officer or officers who apprehended the offender; and the other half of such fines and forfeitures, and the other half of the proceeds of sale, or in the case of opium as aforesaid, a reward of one rupee eight annas for each seer, shall be given to the informer. If in any case the fine or forfeiture is not realized, the board of revenue may grant such reasonable reward, not exceeding the sum of two hundred rupees, as may seem to them fit; and the said board may direct by general order what classes of abkaree officers shall receive rewards, and what classes shall have no title to share therein. Act XXI. 1856, sect. 76.

Disposal of fines, &c., as rewards.

Rewards where no fine is realized.

3438. All fines and forfeitures levied under this Act, the disposal of which is not specially provided for, shall belong to government; but the board of revenue may appropriate any portion thereof, not exceeding one half, for rewarding informers, or for compensating persons subjected to annoyance or injury by any proceedings under this Act. Act XXI. 1856, sect. 77.

Fines undisposed of to belong to government.

Special rewards to informers.

3439. When the duties leviable on any of the articles above enumerated [spirituous or fermented liquors, or intoxicating drugs, or any description of such liquors or drugs] are

The farmer to make his own arrangements with

the manufacturers and vendors within the limits of his farm.

let in farm, the farmer shall be at liberty to make his own arrangements with the manufacturers and vendors within the limits of his farm; and all the penalties and forfeitures prescribed by this Act for the unlawful manufacture, sale, or possession, of any such article shall be incurred by all persons manufacturing, selling, or possessing the same without license or authority from the farmer. Act XXI. 1856, sect. 81.

List of licenses granted by farmer to be filed.

3440. Provided always, that every such farmer shall be required to file in the collector's office a list of all the licenses granted by him in such form as may be prescribed by the board of revenue. Provided also, that it shall be lawful for the collector, with the sanction of the said board, before entering into engagements for any such farm, to make such reservations or restrictions with respect to the grant of licenses as may be deemed proper and expedient. Act XXI. 1856, sect. 82.

Lease may be cancelled or new restriction imposed.

3441. The collector may, with the sanction of the board of revenue, cancel any lease granted under this Act; or, within the period of the lease, impose any new restriction on the farmer. Act XXI. 1856, sect. 83.

Rules respecting the manufacture and sale of spirits, &c. in military cantonments.

3442. Within the limits of any military cantonment,^(a) and within a circle drawn at a distance of two miles, or such other distance as may in any case be prescribed by government, from such limits, licenses for the manufacture of spirits and for the sale of spirituous and fermented liquors shall not be granted, nor shall the duties leviable upon such spirits and liquors be let in farm, otherwise than with the knowledge and consent of the commanding officer: and, upon the requisition of such officer, any license which may have been granted either by the collector or by a farmer, within such circle or limits, shall be immediately withdrawn. Act XXI. 1856, sect. 85.

Mode of making arrest or search within military cantonments.

3443. In all other respects, the foregoing provisions of this Act shall have full force and effect within such circle and limits as aforesaid. Provided, however, that, when arrest or search is to be made within the limits of any cantonment, the collector or other officer authorized under this Act to make arrest or search, shall, whenever it may be practicable, give previous notice to the commanding officer, and in all other cases shall report the arrest or search to such commanding officer with as little delay as possible. Provided also, that nothing herein contained shall affect or interfere with the provisions of Act XVIII. 1853.^(a) Act XXI. 1856, sect. 86.

Powers vested in officers of the opium department.

3444. In the districts in which the poppy is cultivated on account of government, the deputy opium agents and sub-deputy agents shall exercise the powers vested by this Act in collectors, so far as the same relate to the suppression of illegal dealings in opium; and the officers of the opium department shall exercise the powers vested by this Act in abkaree officers for the seizure of illicit opium and the arrest of persons found in possession thereof, and, in respect to such seizures and arrests, shall be held and deemed to be abkaree officers within the meaning of this Act. Act XXI. 1856, sect. 87.

Construction of terms;
government,

3445. The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction:—The word "government" shall mean the lieutenant governors of Bengal and

(a) For rules regarding the sale of spirits in cantonments, see paras. 295 *et seq.*

of the North-Western provinces. The expression “board of revenue” shall mean the board of revenue in Calcutta and the sudder board of revenue at Agra. The word “commissioner” shall mean the commissioner of a revenue division, or a commissioner of abkaree. The word “collector” shall include a deputy collector, or other revenue officer in independent charge of a district, and a superintendent of abkaree revenue. The word “magistrate” shall include a joint magistrate, or other person lawfully exercising the powers of a magistrate, and any assistant or deputy magistrate with special powers stationed at a place other than the sudder station of the magistrate and empowered to try cases without reference from the magistrate. The expression “country spirit” shall mean any spirit made by the native process of distillation. The expression “intoxicating drugs” shall include ganjah, bhang, churrus, and opium, and every preparation and admixture of the same. Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number. Words importing the masculine gender shall include females. Act XXI. 1856, sect. 90.

board of revenue,
commissioner,
collector,
magistrate,
country spirit,
intoxicating
drugs,
number,
gender.

CHAPTER VII.

OF OFFENCES AGAINST THE LAWS RELATING TO THE CULTIVATION OF THE POPPY AND THE MANUFACTURE OF OPIUM.

3446. Any officer of the opium department who shall receive any fee, gratuity, perquisite, or allowance, either in money or effects, under any pretence whatsoever, from any cultivator, or from any other person employed or concerned in the provision of opium, other than the authorized allowances of his situation, shall be dismissed from his office, and, on conviction before a magistrate, shall be liable to a fine not exceeding five hundred rupees. Act XIII. 1857, sect. 17.

Penalty on of-
ficer taking bribe.

3447. Any cultivator entering into engagements for the cultivation of the poppy on account of government, who may embezzle, or otherwise illegally dispose of, any part of the opium produced, shall be liable to a penalty not exceeding ten times the fixed price of the opium which he may be proved to have so disposed of, or to a fine not exceeding five hundred rupees, if the amount of the said penalty be less than that sum; and the opium, if found, shall be liable to confiscation. Act XIII. 1857, sect. 19.

Penalty for em-
bezzlement of
opium by cultiva-
tor.

3448. Any person purchasing or receiving any opium from a cultivator or other person, who may have entered into engagements for the cultivation of the poppy, or who may be employed in the provision of opium on account of government, or bargaining for the purchase of opium with such cultivator or person, or in any way causing or encouraging such cultivator or person to embezzle or illegally dispose of any opium; and any officer of the opium department conniving in any way at the embezzlement or illegal disposal of any

Penalty for illegal
purchase of opium
from cultivator.

opium; shall be liable to a fine not exceeding rupees one thousand, unless the opium purchased, bargained for, or illegally disposed of, shall exceed the weight of thirty-one seers and a quarter, in which case the fine may be increased, at a rate not exceeding thirty-two rupees per seer for all such opium in excess of that weight; and the opium, if found, shall be liable to confiscation. Act XIII. 1857, sect. 20.

Penalty for unlicensed cultivation.

3449. Any person who shall cultivate the poppy without license from a sub-deputy agent or other officer duly authorized in that behalf, and any person who shall in any way cause, encourage, or promote such illegal cultivation, shall be liable to a fine not exceeding five hundred rupees, unless the quantity of land so illegally cultivated shall exceed twenty beegahs, in which case the fine may be at the rate of twenty-five rupees per beegah; and the poppy plants shall be destroyed; or, if any opium have been extracted from them, it shall be seized and confiscated. If the opium shall have been extracted and shall not be seized, the offender shall be liable to a further fine not exceeding the rate of thirty-two rupees per beegah of land illegally cultivated. Act XIII. 1857, sect. 21.

Duty of landholders and others to give information of illegal cultivation.

3450. All proprietors, farmers, tihseeldars, gomastahs, and other managers of land, shall give immediate information to the police or abkaree darogahs, or opium gomastahs, or to the magistrates, collectors, or officers in charge of the abkaree mahal, or to the agents, their deputies, or sub-deputies, of all poppy which may be illegally cultivated within the estates or farms held or managed by them; and every proprietor, farmer, tihseeldar, gomastah, or other manager of land, who shall knowingly neglect to give such information, shall be liable to the penalties for illegal cultivation prescribed in the last preceding section. Act XIII. 1857, sect. 22.

Duty of police and other officers to give information of illegal cultivation.

3451. All police and abkaree darogahs, and opium gomastahs, and all native officers, of government of whatever description, and all chokeedars, paiks, and other village police officers, shall give immediate information to the authority to which they are subordinate, when it may come to their knowledge that any land has been illegally cultivated with poppy; and such authority shall transmit the information to the sub-deputy agent, or other officer superintending the cultivation of the poppy, if in a district where the poppy is cultivated on account of government, or to the collector or officer in charge of the abkaree mahal, if in a district where the poppy is not so cultivated. Every police or abkaree darogah, opium gomastah, native officer, chokeedar, or other police officer as aforesaid, who shall neglect to give such information, or shall in any respect connive at the illicit cultivation of the poppy, shall be liable to a fine not exceeding one thousand rupees if the offender be an officer of the opium department, or in any other case to a fine not exceeding five hundred rupees. Act XIII. 1857, sect. 23.

Police officers to assist in suppressing illicit cultivation, &c., of opium.

3452. All officers of police are strictly enjoined, under pain of dismissal from office, to assist in suppressing the illicit cultivation, manufacture, sale, purchase, importation, transportation, or possession of opium. Reg. XX. 1817, sect. 29, cl. 9.

Police darogahs are to attach illicit crops, and to take security from the cultivator for his

3453. Whenever a police darogah obtains intelligence of any land within his jurisdiction having been cultivated with the poppy, except with the permission or on account of government, he is immediately to proceed to the spot, and if the information be correct

to attach the crop so illegally cultivated, and to report the same to the magistrate. He is, at the same time, to take security from the cultivator of the ground for his appearance before the collector or other officer in charge of the abkaree mahal; and, in the event of such cultivator not giving the required security, he is to send him in custody to the magistrate with the necessary witnesses to prove the quantity of land which has been cultivated by him with the poppy. Reg. XX. 1817, sect. 29, cl. 10 and 11.

appearance, or to send him to the magistrate with the evidence for the prosecution.

3454. Any police darogah, who knowingly permits the cultivation of the poppy within his jurisdiction, or who in any respect is convicted of conniving at the illicit cultivation of the poppy, is, besides being liable to dismissal from office for neglect of duty, to be further subject on conviction before the magistrate to the payment of a fine, to be calculated at the rate of 20 rupees per beegah for whatever quantity of land has been so illegally cultivated within his jurisdiction with his knowledge or connivance: and the fine, if not duly paid, is commutable to imprisonment for a period not exceeding 6 months. Reg. XX. 1817, sect. 29, cl. 12.

Punishment of police darogah conniving at the illicit cultivation of the poppy.

3455. Whenever a police or abkaree darogah or opium gomastah shall receive intelligence of any land within his jurisdiction having been illegally cultivated with poppy, he shall immediately proceed to the spot, and if the information be correct, shall attach the crop so illegally cultivated, and report the same without delay to the authority to which he may be subordinate. He shall at the same time take security from the cultivator of the said land for his appearance before the magistrate; and, in the event of such cultivator not giving the required security, he shall send him in custody to the magistrate. Act XIII. 1857, sect. 24.

Police or abkaree darogah how to proceed in case of illegal cultivation.

3456. Proprietors, farmers, tulseeldars, gomastahs, and other managers of land, shall be at liberty to attach any poppy grown in opposition to the provisions of this Act in any estate or farm held or managed by them, and shall immediately report such attachment to the nearest police or abkaree darogah, or opium gomastah, who shall thereupon proceed in conformity with the rules contained in the last preceding section. Act XIII. 1857, sect. 25.

Landholders, &c. may attach in cases of illegal cultivation.

3457. Except as otherwise herein provided, all fines, penalties, and confiscations prescribed by this Act, shall be adjudged by the magistrate on the information of the deputy agent or sub-deputy agent in districts in which the poppy is cultivated on account of government, and in other districts on the information of the collector or officer in charge of the abkaree mahal; provided that no information of an offence against this Act shall be admitted unless it be preferred within the period of one year after the commission of the offence to which the information refers. Act XIII. 1857, sect. 26.

Adjudication of penalties.

3458. When any person is sentenced to pay any fine or penalty under this Act, such person, in default of payment of the same, may be imprisoned by order of the magistrate for any time not exceeding six months, or until the fine is sooner paid. Act XIII. 1857, sect. 27.

Imprisonment in default of payment of fines under this Act.

3459. Whenever any person shall be convicted of an offence against this Act after having been previously convicted of a like offence, he shall be liable, in addition to the penalty attached

Punishment for repetition of offence.

to such offence, to imprisonment for a period not exceeding six months; and a like punishment of imprisonment not exceeding six months shall be incurred, in addition to the punishment which may be inflicted for a first offence, upon every subsequent conviction after the second. Act XIII. 1857, sect. 28.

Place of imprisonment under the last three preceding sections.

3460. Every person who shall be imprisoned under the last preceding section, or on account of the non-payment of any fine or penalty prescribed by this Act, unless such person be an officer of government or a village police officer convicted of an offence under sections 17, 20, or 23, shall be imprisoned in the civil jail. Act XIII. 1857 sect. 29.

Disposal of fines and forfeitures.

3461. One half of all fines and penalties levied from persons convicted of offences under sections 19, 20, and 21 of this Act, together with a reward of one rupee eight annas for each seer of opium confiscated and declared by the civil surgeon to be fit for use, shall, upon adjudication of the case, be awarded to the officer or officers who apprehended the offender, and the other half of such fines and forfeitures, together with a reward of one rupee eight annas for each seer of opium confiscated as aforesaid, shall be given to the informer. If in any case the fine or penalty is not realized, the board of revenue may grant such reasonable reward, not exceeding the sum of two hundred rupees, as may seem to them fit. Act XIII. 1857, sect. 30.

Governor general in council may allow free cultivation of poppy and manufacture of opium in any district.

3462. The governor general of India in council may authorize, by an order of government, the cultivation of the poppy and the manufacture of opium in any district or districts without license from a sub-deputy opium agent, or other officer of government; and, when such order has been published, all the provisions of this Act shall cease to have effect in such district or districts. Provided always, that the government may prescribe rules for the delivery of the opium so produced to officers of government appointed to receive it; and, when such rules have been passed, any cultivator or other person engaged in the cultivation of the poppy and manufacture of opium who shall dispose of any opium otherwise than is allowed by such rules, and any person who shall purchase or receive any such opium in contravention of the said rules, shall be subject to the penalties prescribed in section 19 of this Act; and such penalties may be adjudged by a magistrate on the information of any officer of government or of any other person. Act XIII. 1857, sect. 31.

CHAPTER VIII.

OF OFFENCES AGAINST THE SALT LAWS, IN THE LOWER PROVINCES.

3463. All suits, complaints, and informations for the recovery of any fine or penalty recoverable by government, or by the informer, on account of the illicit manufacture, sale, purchase, importation, transportation, or possession of salt, excepting complaints or charges preferred against public officers for a breach of their official duty, of which the cognizance is specifically reserved to the judges or magistrates, and excepting cases of adulteration of salt, are cognizable in the first instance by the salt agents and superintending officers of salt chokees, any thing in the existing regulations to the contrary notwithstanding. Reg. X. 1819, sect. 96.

Jurisdiction.

What cases regarding salt lie to the salt agent, and what to the magistrate, and civil judge.

3464. All native officers of government of whatever description, including all chokeedars, paiks, and other officers of village police, are strictly enjoined to assist in suppressing the illicit manufacture of salt, by giving instant information to the authority to whom they are immediately subordinate, whenever it comes to their knowledge that any illicit kalary or salt work has been, or is about to be, established in any village: and if any officer aforesaid neglects to give such information, or in any respect connives at the illicit manufacture of salt, such officer, besides being liable to dismission from office, is further subject, on conviction, to the payment of a fine* not exceeding 500 rupees for each kalary or salt work established or worked with his knowledge or connivance. Reg. X. 1819, sect. 34.

Illicit manufacture, &c.

All native officers to assist in suppressing illegal manufacture of salt, under penalty.

* To be adjudged by the salt officers, under sect. 109.

3465. Magistrates or other authorities, who receive information of the establishment of any illicit kalary, are immediately to transmit the information so received to the nearest salt agent or superintendent of salt chokees. Reg. X. 1819, sect. 35.

Magistrate to forward information to salt officers.

3466. All native officers of government of whatever description, and especially all such officers in the districts within which, or in the neighbourhood of which, salt is manufactured on the public account, or in those in which salt chokees are established, are specially enjoined, under pain of dismission from office, and the penalties herein specially provided, to assist in suppressing the illicit sale, purchase, importation, transportation, or possession of salt, by seizing the same if authorized to do so, or if not vested with the power of seizure by giving immediate information to the authority to which they are respectively subject of all instances of such illicit sale, purchase, importation, transportation, or possession of salt which come to their knowledge. Any magistrate or other officer, to whom such information is given, is immediately to transmit the same to the salt agent, or superintending officer of salt chokees. Any native officer aforesaid, who neglects to give information in the cases above specified, or who in any manner connives at the illicit sale, purchase, importation, transportation, or possession of salt, is, on conviction, liable to a fine* not exceeding 5 rupees for each and every maund of salt so sold, purchased, imported, transported, or possessed with his knowledge or connivance. Reg. X. 1819, sect. 54.

All native officers to assist in suppressing illicit sale, transportation, possession, &c. of salt, under penalty.

Magistrate to transmit information to salt officers.

* To be adjudged by the salt officers, under sect. 109.

Police officers to give information to the nearest salt officer, and to the magistrate, of illegal importation, transportation, manufacture, or adulteration of salt.

3467. If any officer of police receives information of any salt, not made in the Company's provinces, having been illegally imported into the said territories ; or of salt of any description being transported without the proper rowannahs or charchitties ; or of any salt being manufactured on account of individuals by molungees, or other persons, at the kalaries or salt works established by individuals for the purpose of manufacturing salt on their own account, or that of any other person ; or of the adulteration of salt by mixing it with the substance called "khari nūn," or other substance such as "natron" or native fossil alkali, or the vegetable alkali or potash ; such police officers are to transmit immediate notice thereof to the nearest officer in the salt department empowered to attach contraband or adulterated salt, and to the magistrate to whose immediate orders they are subject. Reg. XX. 1817, sect. 29, cl. 6.

Seizure.

Penalty for persons resisting salt officers attaching salt ;

* For rule for commutation of fine, see *pura* 3512.

3468. Any person, who by force or threats prevents an officer of the salt department, or other officer authorized to attach salt, from effecting the seizure of any salt suspected to be contraband or adulterated, or who forcibly resists such officer in the execution of that duty, is liable, on conviction before a magistrate, to a fine not exceeding 200 rupees.* Parties offending are further liable, in the event of an affray or other breach of the peace occurring in consequence of their resistance, to be punished under the general rules applicable to such cases. Reg. X. 1819, sect. 56.

3469. The expression "further" in this rule does not mean that both penalties are to be awarded on one and the same indictment. A person might be tried for and convicted of the first offence, and fined by the magistrate ; or the same party might be indicted and committed to the sessions for the second offence, and punished ; but a cumulative sentence cannot be passed on an indictment for the latter offence only. Reports *L. P.* 1854, part 2, page 636.

or arresting parties.

3470. If any person by threats or violence prevents the lawful arrest of any person by an officer duly authorized to seize salt, or procures his release after arrest, or if the party found with the salt in possession or any other persons resist any such officers, they are severally and respectively liable to the punishment prescribed in the preceding paragraph. Act XXIX. 1838, sect. 19.

Salt officers attaching salt, who fear resistance, to apply to the police for aid.

3471. If any officer authorized to attach salt has seized, or is about to seize, any despatch of salt, on information or suspicion of its being contraband, or has effected or is about to effect the attachment of the cattle, carriages, or boats used in transporting such salt, and has reason to apprehend forcible resistance, such officer is to apply to the nearest darogah to aid him in the execution of his duty ; and all darogahs or other officers in charge of thanas or chokees, to whom such application is made, or who have otherwise reason to apprehend the occurrence of a breach of the peace in consequence of a seizure of salt, are immediately to afford the requisite aid to effect the seizure and preserve the peace. Reg. X. 1819, sect. 57.

The police officers are to comply with such applications.

3472. The officers of police, as required by the above provisions(a), are to comply with applications made to them by a salt agent, or superintendent of a salt chokee, or by

(a) In the original is quoted cl. 2, sect. 11, Reg. VI. 1801 ; but the whole of that regulation is repealed by Reg. X. 1819, and the provisions quoted in the text have been enacted instead.

the officers attached to the salt department, or by any collector of revenue or customs, for assistance in effecting the seizure of salt illegally imported, manufactured, sold, or transported; and also for the seizure of adulterated salt, and for the attachment of the cattle, carriages, or boats used in transporting such salt. Reg. XX. 1817, sect. 29, cl. 5.

3473. Such seizures are to be made on the responsibility and at the risk of the officers authorized to seize, and the police officers are not competent to exercise any discretion in regard to the propriety or otherwise of the seizure, which they are called upon to support; but are to be careful to prevent any unnecessary violence. Reg. X. 1819, sect. 58.

In such case no responsibility attaches to the police.

3474. The police officers are to confine themselves to sending the information aforesaid* to the nearest officer in the salt department, and to the magistrate, and to assisting in the seizure of the salt, either under the orders of the magistrate or on application from the officers of the salt department; and are not to seize or detain any salt in the first instance of their own authority, except when they have been vested by government with special authority for making such seizures, in which case they are to receive separate instructions for their guidance in the performance of that duty. Reg. XX. 1817, sect. 29, cl. 7.

Police officers are not to seize salt in the first instance of their own authority, unless specially empowered so to do;

* v. para. 3467.

3475. In all cases, in which it appears that an attachment or seizure of salt has been made by an officer of police without the special orders of the magistrate, or on application from any public officer authorized to require the assistance of the police officer, by whom such attachment is made; he is liable to dismissal from office, and, on the institution of a regular suit in the dewanny adawlut on the part of the proprietor, to the payment of full damages to the whole amount of the loss and expense to which the proprietors have been subjected. Reg. XX. 1817, sect. 29, cl. 8.

under penalty of dismissal, and damages to be adjudged by the civil court.

3476. On receiving certain information that contraband salt is stored in any place situated in the tract of country(a) in Bengal or Orissa within which the transportation of salt without rowannah is not lawful, the salt agent or superintendent of chokees is to proceed to seize it in person, if the place of such store be not too distant, together with the informant, summoning by written notice the nearest police darogah or other officer in charge of the police thana or station to attend likewise, and witness the proceeding. Act XXIX. 1838, sect. 3.

Salt agent or superintendent attaching contraband salt in store within certain limits to summon the nearest police darogah to attend.

3477. For the purpose of making seizure of salt in store so informed against, it is competent to any salt agent or superintendent, having a police officer in company, to break open the door of the house, ware-house, or other place in which the salt is stated to be stored, if, upon requisition duly made, the door is not immediately opened by the owner or occupant thereof. Act XXIX. 1838, sect. 4.

Salt agent or superintendent, having a police officer in company, may break open the door of the store-house.

(a) Such tract does not extend, within the delta of the Ganges and Megna rivers, beyond the line of the reach of the tides in the rivers communicating with the Bay of Bengal as taken at spring tides in the dry season; nor Eastward of the Megna, North of the river Goomtee; nor Westward of the river Hooghly, beyond a line drawn from a point on that river distant one mile from the Northern end of the town of Nyasarai and to the North thereof, to a like point distant one mile to the North of the town of Guttaul, and thence to a like point distant one mile to the North of the town of Midnapore, and thence to a like point distant one mile to the North of Huldipookur in Singbhoom, so as to include each of those towns respectively. Act XXIX. 1838, sect. 38.

The salt agent or superintendent may depute an officer, if he cannot proceed in person.

Forcible entry illegal, except in the presence of certain officers.

But the head officer of a salt chokee or auring may act for the agent if the place is more than 3 kos from the station of the agent or superintendent.

Penalty if police officers refuse to attend on such application, or in any way frustrate the object of the search and seizure.

Rules for breaking open any house, &c.

* v. note page 306.

No responsibility rests with the police in such cases.

Reports to be made by the salt, and police officers;

in which the date and time of delivering the notice to the police officer is to be noted.

3478. If the salt agent or superintendent is not able to proceed in person to make a seizure of salt in manner above provided, he is to send along with the informer one or more confidential officers of his public establishment, not being under the rank of a jemadar of peons, giving to such officer or officers his warrant ordering and authorizing the seizure, and sending notice as above prescribed for the police darogah or other police officer to attend; and the officer so deputed has power to act in like manner as is provided for the agent or superintendent in person; provided that the door of no house, ware-house, or other place, is to be broken open to make a seizure of salt except in the presence of a salt agent or superintendent of chokees, or of an officer so specially deputed, and of an officer of police. Act XXIX. 1838, sect. 5.

3479. It is competent to the head officer of any salt chokee, or auring for the manufacture of salt, on receiving information of salt exceeding one maund in quantity being in store in a house, ware-house, or other place, to act thereupon as provided in sects. 3 and 4 for the salt agent and superintendent, provided that the place of store described in such information be situated at a distance of more than three kos from the station of a salt agent or superintendent of chokees, or from the place where the salt agent or superintendent may be. Act XXIX. 1838, sect. 6.

3480. If the darogah, or person in charge of any police station or thana, receiving notice to attend at a seizure of salt in store, as is above prescribed, does not attend or attending refuses to act in aid of the seizure, or in any way wilfully frustrates the object of the search and seizure, such darogah or other officer is, on representation of the facts by the officers of the salt department, and on conviction of the same before the magistrate of the district, besides being dismissed from office, liable to a fine equal to the amount of fine that would have been leviable on the owners of the salt, if it had been seized according to the information laid. Act XXIX. 1838, sect. 7.

3481. Whenever it is necessary to break open any house, ware-house, or other place, to effect a seizure of salt, the rules and precautions prescribed in Reg. XX. 1817, and sect. 10, Reg. VII. 1799*, for breaking into a house for execution of process of distrain, are always to be observed by the police officers in attendance; provided however that the responsibility for the act, and the determination whether to require the door to be broken open or not, rest with the officers of the salt department only. Act XXIX. 1838, sect. 8.

3482. If the seizure is made by an officer of the salt department other than an agent or superintendent of chokees, such officer is to report the circumstances within twenty-four hours to his official superior; and the police officer in attendance is likewise to report the occurrences at the time of seizure to his official superior. Act XXIX. 1838, sect. 10.

3483. The salt officer bearing the notice as aforesaid, and the police officer receiving such notice, are to specify in their respective reports the date and exact time when the notice was delivered to the latter: and, if any delay occurs in effecting the search, the said officers are to record the circumstances at full length in their respective reports. Reg. X. 1819, sect. 62.

3484. The authority to seize salt, and other articles liable to seizure and confiscation, under the rules of this regulation, is to be exercised, in virtue of their offices, by salt agents and superintendents of salt chokees, and their assistants, uncovenanted European and subordinate native officers. But government has the power of vesting a like authority in such of the magistrates, collectors, or officers of the customs, abkaree, and opium departments, and their subordinate officers respectively, as is deemed fit. Reg. X. 1819, sect. 71, cl. 1.

Power to seize salt vested in whom.

3485. Provided, however, that all uncovenanted European or native officers, making a seizure under the powers vested in them by this regulation, or by the special orders of government, are within 24 hours after making such seizure to communicate their having done so, with a report of the circumstances connected with the seizure, to the authority to which they are respectively subject; and the magistrate or other officer, to whom information of a seizure is thus communicated, is immediately to transmit the report to the nearest salt agent or superintending officer of salt chokees, to whom all salt so seized is to be delivered. Reg. X. 1819, sect. 71, cl. 2.

If such power is vested in subordinate officers of magistrate, they are to report to him within 24 hours after making seizure.

3486. Any salt agent or superintendent of salt chokees, and also any assistant to a salt agent or superintendent, or any head officer of any salt chokee or auring, to whom information is given that salt is unlawfully manufactured in any ware-house, dwelling house, or other enclosed place, within his jurisdiction, may act upon such information in the same manner as in Act XXIX. 1838 he is authorized to act, upon information given him of salt exceeding one maund in quantity being in store in a house, ware-house, or other place; and all freshly manufactured salt found by such officer is liable to seizure together with the implements of manufacture; and the provisions of sects. 2 to 10 Act XXIX. 1838 as to the receipt of information and the manner of search and seizure, and of section 23 of the same Act as to the penalty for false and malicious information, are to be applicable to information given and search and seizure made under this Act. Act III. 1851, sect. 1.

Salt officer how to act on information of illicit manufacture in any ware-house, &c.

3487. The salt officers being alone empowered to attach of their own authority, and by virtue of their offices, salt which they know or suspect to have been illegally manufactured, imported, sold, or transported, no officers excepting those above described are to seize or detain salt, unless specially vested by government with authority to that effect. Reg. X. 1819, sect. 72.

None but officers so empowered can make seizure.

3488. Whenever any of the native officers subordinate to a magistrate, collector, or officer in charge of the abkaree mahal, or a collector or deputy collector of customs, who are specially authorized by government to seize salt, receive information of any salt not made in the Company's provinces of Bengal and Orissa on account of government, having been illegally imported into the said territories; or of salt of any description being transported or stored within the limits of the salt chokees without the proper rowannah(a),

Subordinate native officers so empowered how to proceed on receiving information of the illegal importation, transportation, or manufacture of salt.

(a) A rowannah bears the seal of the salt office and the signature of the secretary or one of the covenanted assistants attached to the board of revenue. It specifies the quantity of salt intended to be transported under it; the date of the sale; and number of the lot in part or in full of which the salt is deliverable; the mode of conveyance; the place to which the salt is to be transported; and the route by which it is to be conveyed. Such rowannahs are current for only one year from their date, after which they are wholly null and void, and in no degree protect any salt which they accompany. Reg. X. 1819, sect. 86, cl. 2.

chalan(a), charchitty(b), or special pass(c); or of any salt being manufactured on account of individuals by molungees or other persons at the kalaries, or salt works established on account of the Company, or at any kalaries or salt works established by individuals for the purpose of manufacturing salt on their own account, or that of any other persons; the several officers aforesaid are, as above directed, to transmit immediate notice thereof to the nearest officer in the salt department, empowered to attach contraband salt, and to the magistrate or other functionary to whose immediate orders they are subject, and are further to be guided by the following rule. If the salt is accompanied by a regular rowannah, chalan, charchitty, or special pass, the native officers are to confine themselves to sending the information aforesaid to the nearest officer in the salt department, and to the European functionary to whom they are subordinate, and to assist in the seizure of the salt either under the orders of their immediate superior, or on application from the officers of the salt department, and are not to seize or detain any salt accompanied by such papers in the first instance of their own authority; but if any despatch of salt is unaccompanied by the rowannah, chalan, charchitty, or special pass, as aforesaid, the said officers are empowered of their own authority to detain the salt, sending without delay notice of the detention of the salt to their superior, and to the nearest officer in the salt department. Any native officer of government (not being an officer attached to the salt department) unless specially authorized to do so, as well as any such officer, who, though specially authorized as above, seizes or detains salt accompanied by a regular rowannah, chalan, charchitty, or special pass, is liable to be dismissed from his office; and to be prosecuted for damages in the dewanny adawlut by the owner or holder of such salt. Reg. X. 1819, sect. 73.

Penalties for
breach of these
rules.

If salt has been
seized by order of
magistrate, he is
empowered to re-
lease it before deli-
very to the salt
officers.

3489. If salt has been seized by the officers or under the orders of a magistrate, or by the orders of any collector of revenue or customs, or deputy collector, or any officer in charge of the abkarree mahal, or opium agent or his deputy, previously to the delivery of such salt to the officers of the salt department, and such magistrate, collector, or other

(a) A *chalan*, in all practicable cases, is to be signed by the agent or other European officer in charge of the golahs, as well as by the darogah or other head native officer of the golah station at which the salt is delivered. It specifies the quantity of salt laden on the boat, vessel, or karroo of bullocks; the date of the sale; and number of the lot in part or in full of which the salt is delivered; the name of the original purchaser at the sale; and of the present proprietor of the salt; the number of the rowannah by which the salt is covered, and the total quantity of salt covered by the same; the name of the gomashlah who receives the salt; of the proprietor of the boat, vessel, or karroo of bullocks, on which the salt is laden; and of the manjee, sarang, or sirdar, in charge of such boat, vessel, or karroo; the description, burden, and number of oars of the boat or vessel, and the number of bullocks in the karroo; also the place of destination of the salt. Reg. X. 1819, sect. 36, cl. 4.

(b) A *charchitty* has affixed to it the signature of the darogah or mohurir of the salt chokee whence it was issued, and specifies the quantity of salt covered by it, which quantity must be less than 100 maunds of 82 sicca weight to the seer; also the time for which it is current, which is never to exceed 6 months; the number of the rowannah from which the salt is written off; and the limits within which the salt is to be sold. The *charchitty* is current only within the limits subject to the control of the darogah by whom it has been granted, and does not cover salt in its transit through the chokees subordinate to any other darogah. Reg. X. 1819, sect. 36, cl. 5 and 6.

(c) A *special pass*, or *atrafee rowannah*, for the conveyance of salt not exceeding 100 maunds to any place beyond the line of the chokees within which the salt is stored, is duly registered, signed, and sealed by the secretary to the board of revenue or one of the covenanted assistants of the board, as a rowannah. Its currency in no case exceeds the period of 6 months. Reg. X. 1819, sect. 36, cl. 7 and 8.

officer aforesaid, is of opinion that the salt was seized on false or erroneous information, and that the salt is not liable to confiscation, he is empowered to release the salt. Reg. X. 1819, sect. 75, cl. 3.

3490. The magistrates are to cause to be communicated, in the manner which appears to them most convenient, to the salt agent or superintending officer of chokees, the particulars of all information received from the police officers, and also of all applications made to those officers by the officers in the salt department, or by any officer empowered to attach salt, for assistance in the seizure of salt. Reg. X. 1819, sect. 76.

Magistrates to communicate to agent all information regarding salt received from police officers.

3491. Whenever salt is seized as contraband, because unaccompanied by any rowannah or other protecting document, the person or persons conveying or having in charge the same are to be apprehended; and all officers, who are empowered to seize salt under the above provisions, are likewise competent to arrest the parties found with or having the salt in possession. Act XXIX. 1838, sect. 12.

When contraband salt is seized, the persons conveying it are to be arrested.

3492. It is lawful for the salt agents and superintendents of salt chokees, and other officers, who are duly empowered to seize salt, to stop and search any boats or vessels of a build adapted for sea navigation, that are found within the limits described in sect. 33*; and if salt is found thereon, not accompanied by the necessary rowannah or other protecting document, to detain the vessel with the crew thereof, and to take them for adjudication of the case to the nearest accessible station of an officer empowered to adjudicate cases of contravention of the salt laws. Act XXIX. 1838, sect. 13.

Officers empowered to seize salt may stop and search certain vessels.

* *v. note to para. 3476.*

3493. Whenever any person is arrested by an officer of the salt department, or by any other officer of other departments duly empowered to make a seizure of salt, the person making the arrest is bound to carry the party arrested direct to the officer of the salt department, who is competent to try the case; and no person so arrested is to be released, until the case has been brought to judgment in the manner provided by law. Act XXIX. 1838, sect. 21.

Persons arrested are to be carried direct to the nearest salt officer competent to try the case; and once arrested are not to be released.

3494. Officers of every description in the employment of salt agents, or superintending officers of salt chokees, are prohibited from taking or receiving any fee, gratuity, perquisite, or allowance, either in money or effects, under any pretence whatever, from any molungee, or other person employed or concerned in the manufacture of salt: and, if any such description of person subject to the authority of the salt agent, or superintending officer, is convicted before the magistrate, within whose jurisdiction the offence has been committed, of disobedience to this prohibition, he is to be adjudged by the court to refund the money or things so taken or received; and, besides being dismissed from his office by the officer or authority to which he is subject, he is further liable to imprisonment for any term not exceeding 6 months, which the court judges proper, together with such fine (not exceeding 500 rupees, for every 100 rupees, in amount or value taken or received as aforesaid) as appears adequate to his offence*: provided also that the above rule is held applicable to any officer entrusted with the payment of advances to the molungees, who, under any pretence or color whatsoever, appropriates to his own use the whole or any part thereof, or who takes or requires

Misconduct of salt officers.

Penalties for an officer in salt-employment taking fees, or misappropriating advances entrusted to him, or taking or receiving false receipt.

* For rule for commutation of fine, see para. 3512.

from any molungee, or other person employed or concerned in the manufacture of salt, a receipt or other written acknowledgment for a larger sum than has been actually paid to him. Reg. X. 1819, sect. 63.

Officers embezzling salt, or permitting it to be carried off without order, or granting false receipts, are to be punished as for theft.

3495. Any officer in charge of a salt golah or any ware-house or other place in which salt, the property of government, is stored, who embezzles any of the salt received into any such golah or place of deposit entrusted to his charge; or who knowingly permits any salt so received to be carried from such golah or place of deposit, without an order from the agent to whom he is subordinate; or who so permits to be carried from such golah or place aforesaid a greater quantity of salt than is specified in such order; or who knowingly grants a receipt for a larger quantity of salt than is received and stored by him; is to be held guilty of theft, and punished accordingly, on conviction before a competent criminal court. Reg. X. 1819, sect. 64.

And it is sufficient proof of embezzlement that the out-turn of the golah exhibits a deficiency for which they cannot account.

Penalty for not producing the account.

Punishment for embezzlement.

3496. But in modification of the above provision and in addition thereto, it is enacted that when there is no direct proof of the unauthorized removal of salt from any golah or place of government store, sufficient to convict the parties concerned therein of theft within the above provisions, the officer or officers, who have been entrusted with the charge of such golah or place of government store, are nevertheless liable for the offence of embezzling the salt of any store in their custody, the out-turn of which exhibits, according to the accounts kept of receipts and deliveries, a deficiency for which he or they may not duly account. And the officer in charge of any golah or salt store is in like manner to be deemed guilty of embezzlement, if he has made away with or does not produce the true account of such store: and any person, against whom the offence of embezzlement is established under this section, is liable, on conviction before the magistrate, to be punished by fine and imprisonment, under the general powers vested in the magistrates. Act XXIX. 1838, sect. 28.

Such cases not to be committed to sessions.

3497. In a case under this section the magistrate committed a prisoner to the sessions and the judge sentenced him to imprisonment for 4 years. But the sudder court held that, under the peculiar wording of the law, no punishment in excess of the general powers laid down in sect. 19, Reg. IX. 1807 is legal; and that the magistrate should have disposed of the case himself. On this account the proceedings were quashed, and the papers of the case were returned to the magistrate for that purpose. Reports *L. P.* 1851, page 476.

Punishment of salt officers vexatiously and unnecessarily seizing goods, or arresting any person, or detaining any boat.

3498. If any officer of the salt department is convicted before the magistrate of having vexatiously and unnecessarily seized the goods of any person on the pretence of seizing or searching for salt; or of having vexatiously and unnecessarily arrested any person; or of having stopped and detained any boat unnecessarily and without authority; or of having detained any boat longer than is necessary for the purpose of search; every such officer is, besides dismissal, to be punished with imprisonment not exceeding 6 months, and with fine not exceeding 200 rupees, commutable if not paid to a further imprisonment not exceeding 6 months. Act XXIX. 1838, sect. 22.

Punishment for extortion.

3499. The provisions of sect. 38, Reg. IX. 1810, which declares native officers in the customs department subject for extortion to imprisonment, fine, and corporal punishment,

are not applicable to the native officers in the salt department. But, though there is no corresponding enactment in Reg. X. 1819, the officers of the salt department are of course amenable to justice for acts of extortion under the general regulations. Const. No. 476.

3500. Any common or alimentary salt, adulterated by an artificial admixture with the substance called khari nún, or mixed with phulkhari nún, puckwa salt, or any description of impure and bitter salt, which is found in any golah, or shop, in any place whatsoever, is to be confiscated and destroyed; and any salt merchant, or other person selling salt, wholesale or retail, who so adulterates it, or knowingly sells any salt so adulterated, is to pay a fine calculated at the rate of 10 rupees per maund of 82 sicca weight to the seer upon the quantity which is found so adulterated. Reg. X. 1819, sect. 77.

3501. Salt adulterated in any of the modes above stated is to be seized by all officers empowered by this regulation to seize salt, who immediately on making any attachment, or seizure, are required to report the circumstance to the magistrate within whose jurisdiction the attachment has been made;—the magistrate, on receiving such report, is without delay to institute a summary inquiry into the circumstances of the case; and, if it appears to him that the salt has been adulterated as aforesaid, and is in consequence liable to confiscation, he is to proceed to confiscate it accordingly, and to levy the prescribed fine, commutable if not paid to imprisonment in the dewanny jail for a period not exceeding 6 months. Reg. X. 1819, sect. 78.

3502. In cases of attachment of salt alleged to be adulterated with khari nún, or any other salt of the description above specified, the magistrate is without loss of time to ascertain the fact by reference either to the civil surgeon of the station for examination, or to a committee of respectable merchants or dealers in salt, or in any other mode that appears most likely to elicit the truth. Reg. X. 1819, sect. 79.

3503. Provided always, that if the proprietor of such confiscated salt, being dissatisfied with the order of confiscation, immediately gives responsible security for the amount of the penalty, and further, within a period of one month, institutes a regular suit in the dewanny adawlut against the officer, who seized the salt, for damages,—in such case the magistrate is to suspend the execution of his order and to stay all further proceedings: but if, at the expiration of one month from the date of the order of confiscation, no suit has been instituted by the proprietor of the salt, the magistrate is without further delay to levy the penalty from his security, and otherwise to carry the order of confiscation into full effect. Reg. X. 1819, sect. 80.

3504. In all cases where any proprietor of salt confiscated for being adulterated with khari nún, or any of the substances aforesaid, is unable to give the above security for the amount of the penalty, the magistrate, upon his being satisfied of the inability of the party to give security, is empowered to dispense with security, taking from the party bail for his appearance only to abide the issue of the suit; or, in the event of the suit not being instituted within the period prescribed by the preceding section, to answer in his own person

Adulteration.

Certain kinds of adulterated salt to be confiscated and destroyed.

Penalty on persons adulterating it, or selling such,

to be adjudged by the magistrate on a summary inquiry, instituted on the report of the officer seizing such.

Magistrate in what manner to ascertain whether the salt is adulterated.

Magistrate to stay proceedings, if the proprietor of the salt give security for the fine, and institutes a suit in the civil court against the officer who seized the salt within one month.

Magistrate may dispense with security, taking bail for his appearance.

the amount of the penalty ; and in the meantime the magistrate is to keep the salt under attachment. Reg. X. 1819, sect. 81.

Salt to be held under attachment pending suit.

3505. In the event of a regular suit being instituted for the purpose of setting aside the order of confiscation, the salt is to be held under attachment by the court until a final decision is passed in the cause. Reg. X. 1819, sect. 84.

The above rules are applicable to panga salt mixed with certain other kinds ;

3506. The rules contained in the six foregoing paragraphs, with regard to the adulteration of alimentary salt with khari nún and other descriptions of impure and bitter salt, are equally applicable to all panga salt, which is found within the provinces of Bengal, Behar, and Orissa, mixed with balumba, salumba, or other salt not being salt sold on account of government, or imported by sea under the provisions of the customs laws^(a); excepting that any person who sells, or in whose possession salt of this description is found, he knowing the same, is, besides the forfeiture of the salt, to pay to government the sum of 5 rupees for every maund of 82 sicca weight upon the quantity which is so mixed, instead of 10 rupees per maund as prescribed in sect. 77 ; provided further that salt of this description, which is confiscated, is not to be destroyed, but is to be disposed of in such place without the limits of the provinces of Bengal, Behar, and Orissa, and in such manner as is directed by government. Reg. X. 1819, sects. 85 and 93.

but the fine is to be less ;

and such salt is to be disposed of as government directs.

If seizure is made by native officers without information they are entitled to half the fine ;

3507. When attachments or seizures of salt adulterated with khari nún, or other salts of the nature described above, are made wholly by the native officers of government, and not upon any information furnished to them, they are entitled to receive one moiety of the fine, which is levied from the offender, agreeably to the rule prescribed above, and the other moiety is to be carried to the account of government. Reg. X. 1819, sect. 94, cl. 1.

if with information, to one-third, and the informer to one third,

3508. If any other person or persons give information of salt being so adulterated to the native officers of government, and the salt is seized in consequence of such information, he or they are entitled to receive one-third of the fine which is levied as above prescribed, and the officer, who has made the seizure, is entitled to receive also one-third of the amount : the remaining third is to be carried to the account of government. Reg. X. 1819, sect. 94, cl. 2.

Proceeds of sale of boats, &c. to be divided in the same manner.

3509. The boats, carriages, &c., on which such adulterated salt is loaded, together with the horses, bullocks, and other cattle employed in its transportation, are to be forfeited and sold by public sale ; and the proceeds of the sale are to be distributed in the manner above mentioned for the distribution of the fine levied from the offender. Reg. X. 1819, sect. 94, cl. 3.

Board of revenue may remit any portion of such fine and penalty.

3510. In all cases in which any salt is forfeited to government under the rules contained in this regulation, or in which any person has been subjected to the penalties prescribed in sect. 77, it is competent to the board of revenue, on application from the party, to call for a report of the circumstances of the case from the salt agent or superintendent, by whom it was in the first instance investigated, and to remit any portion of the fine or penalty which has been imposed. Reg. X. 1819, sect. 117, cl. 1.

(a) Reg. XV. 1817 is mentioned in the text ; but that has been repealed by Act XVI. 1837.

3511. If any person wilfully and maliciously gives false information in respect to there being illicit salt in store in any house or ware-house, and so procures that such house or ware-house is searched to the injury or vexation of the owners thereof, or of any other person or persons whatsoever, such false informer is, on conviction of the offence before any magistrate, liable to imprisonment for two years, and to a fine not exceeding 500 rupees, at the discretion of any magistrate by whom the case is tried, and in case of the non-payment of the fine to imprisonment for a further period of six months. Act XXIX. 1838, sect. 23.

False information

Punishment of persons wilfully and maliciously giving false information regarding salt in store.

3512. Whenever a penalty or fine is adjudged against any person under the provisions of this regulation, it is competent to the officer or authority adjudging the same, in case the amount is not discharged, to award a period of imprisonment in commutation according to the following scale, in addition to such imprisonment as such officer or authority is specially empowered to adjudge :

Fines and imprisonment.

Rule for commutation of the above fines to imprisonment.

if the amount of the fine or penalty does not exceed 50 rupees,—the imprisonment to be awarded in commutation is not to be less than 15 days, and not more than one month :

if the amount of the fine or penalty exceeds 50, and is less than 100 rupees,—the imprisonment to be awarded in commutation is not to be less than one month, and not more than 2 months :

if the amount of the fine or penalty exceeds 100, and is not more than 500 rupees,—the imprisonment to be awarded in commutation is not to be less than 2 months, and not more than 4 months :

if the amount of the fine or penalty exceeds 500 rupees,—the imprisonment to be awarded in commutation is not to be less than 4 months, and not more than 6 months.

Reg. X. 1819, sect. 110.

3513. All persons sentenced to imprisonment under the provisions of this regulation, and all persons confined for non-payment of the fines to which they are liable, are to be confined exclusively in the dewanny jail. Reg. X. 1819, sect. 121.

Persons confined under these rules to be imprisoned in the civil jail; except when persons concerned in illicit manufacture, or native officers causing it to be manufactured on their own account, or molungees embezzling, are sentenced to imprisonment in addition to fine; or persons smuggling are sentenced to imprisonment in lieu of fine.

3514. But persons convicted of having been concerned in or having encouraged or promoted the illicit manufacture of salt,—or officers or servants employed in the salt department, or any other native officer of government, convicted of causing salt to be obtained from the manufacturers or other persons employed in the salt department otherwise than on account of government, or of having caused salt to be manufactured for their own benefit, or of having knowingly permitted such manufacture for the benefit of any other person,—or molungees, or others receiving advances for the manufacture of salt on account of government, convicted of embezzlement of the salt for the provision of which they received advances from government, or of otherwise illegally disposing of any salt manufactured by them,—and sentenced to imprisonment in addition to fine, are to undergo such punishment in the foudjaree jail. And so, persons convicted of smuggling salt without

The warrant of officer adjudicating is authority for the magistrate to hold persons in confinement.

rowannah singly or in gang, and sentenced to pay a fine to government, are, if the fine is not paid, to be imprisoned in the foudaree jail. And the warrant of the officer adjudicating any such case is authority for the magistrate, or other person in charge of the foudaree jail, to hold the person described therein in confinement in such jail, as is specified and required in the said warrant. Act XXIX. 1838, sects. 15 and 16.

Salt lands.

Penalty for persons illicitly cultivating, clearing, or ploughing lands transferred to the salt department.

3515. No cultivation is to be allowed within the limits of any chur or other lands transferred to the salt department, unless with the permission of the board of revenue so long as the manufacture is continued on the same; and it is lawful for the salt agent and his subordinate officers to attach, confiscate, and dispose of, as is directed by the board, any crops grown on such land in contravention of this rule, and to require the police to aid him in doing so. And any person illicitly cultivating, clearing, or ploughing such land, or doing any act preparatory to its cultivation and clearance, or causing another to do so, is, on conviction before a magistrate, subject for every such offence to a fine not exceeding 500 rupees, besides being liable in a civil action for any damages, which the salt department sustains. Provided, however, that if any chur or salt land occupied as above becomes through natural causes useless for the purposes of the salt department, the proprietor thereof is to be entitled to recover possession of the same, on establishing the fact to the satisfaction of the board of revenue or by a regular suit in court, and on relinquishing the compensation paid to him by the salt agent for the use of the land. Reg. I. 1824, sect. 12.

Such fines commutable to imprisonment.

* *r. paras.* 1342 and 1347.

3516. Fines imposed under the above rule are to be commuted to imprisonment under the provisions of sect. 3, Reg. XIV. 1797,* and sect. 19, Reg. IX. 1807, whenever the party, on whom the fine is imposed, neglects to pay it. Const. No. 388.

CHAPTER IX.

OF OFFENCES AGAINST THE CUSTOMS AND SALT LAWS IN THE WESTERN PROVINCES.

Import and export duties leviable in Western provinces.

3517. The following and no other duties of customs are leviable upon import and export of articles into and from the North Western provinces of the presidency of Bengal, that is to say:—On the import of salt, of all descriptions, two rupees per maund, and a further duty of one rupee per maund on the transmission thereof to the Eastward of Allahabad. On the import of cotton, uncleaned, four annas per maund; cleaned, eight annas per maund. On the export of misri, kund, chini, and all clayed and refined sugar, eight annas per maund; goor, râb, sheerah, and all unclayed and unrefined saccharine produce, three annas per maund. The import of sugar into any part of the said provinces, is, and shall remain, prohibited. Act XIV. 1843, sect. 2.

Government to make rules for collection of such duties.

3518. It shall be lawful for the government of the said provinces from time to time to make and issue such orders as may be deemed expedient for the collection of the aforesaid

duties in such manner, and upon such line or lines, and at such places on or near such line or lines, as may seem fit; and all such orders shall have the same force as if they formed a part of this Act from the date notified in the gazette, wherein they shall be published. Act XIV. 1843, sect. 3.

3519. The manufacture of alimentary salt throughout the Western provinces without the express sanction of the government, is prohibited; and any person engaging in the manufacture of such salt, or preparing or causing to be prepared works for the manufacture of such salt, without such sanction, and all zumeendars or other proprietors of land, or their agents, conniving at such illicit manufacture, shall, on conviction by the magistrate, within the limits of whose district the offence may have occurred, be punished by a fine not exceeding 500 rupees, and, on non-payment of such fine, by imprisonment not exceeding six months with or without hard labor; and all works at which such manufacture shall have been conducted, or which are designed for such manufacture shall be destroyed, and any salt which may be manufactured or stored thereat shall be seized and confiscated. Act XIV. 1843, sect. 4.

Salt not to be manufactured without permission of government.

Penalty.

3520. It shall be lawful for the collectors of customs and the collectors of land revenue, within their jurisdictions, to destroy all works for the manufacture of salt, and to seize the salt stored thereat, and to apprehend the persons concerned in the manufacture thereof, and to make them over for trial to the magistrate within the limits of whose district the offence may have occurred. Act XIV. 1843, sect. 5.

Collectors may destroy salt works, and seize salt.

3521. Whenever any collector or other officer of customs or land revenue, not being under the grade of assistant patrol in the customs department, or of naib tihseeldar in the revenue department, receives credible information that, within his jurisdiction, salt is unlawfully manufactured, in any dwelling-house, ware-house, or other enclosed place, or that salt is unlawfully stored in any such house or place within the limits of customs jurisdiction as defined by the government of the North-Western provinces of the presidency of Bengal under the provision of section 3, Act XIV. 1843, he shall first record in writing the name, residence, and calling of the informant, the locality and description of the house or place where he believes the salt to be manufactured or stored, and the name of the owner or occupant of such house or place, or the name of the person for or by whom such salt is manufactured or stored, and with respect to salt stored the supposed quantity and description of such salt, with the grounds for believing the same to be contraband. Act XXXVI. 1855, sect. 1.

Particulars to be recorded by officer on receipt of information as to unlawful manufacture or store of salt.

3522. The said officer, after recording the particulars aforesaid, may summon from the nearest police station a police officer, not being under the grade of a jemadar, to attend him, and with such police officer and informant proceed to the said house or place, and in their presence search the same for salt unlawfully manufactured or stored; provided that such search be not made between sunset and sunrise. Act XXXVI. 1855, sect. 2.

Officer thereupon may summon police and proceed to search a house for contraband salt.

Proviso.

3523. The said officer, in company with such police officer, may break open the door or force an entry within the said house or place, if, upon requisition duly made, the door be not opened, or admission be refused, by the owner or occupant thereof. Act XXXVI. 1855, sect. 3.

Officer may break open doors.

Rules regarding forcible entry.

3524. A forcible entry under the last preceding section shall only be made in accordance with the rules and precautions prescribed by Reg. XX. 1817, and by sect. 10, Reg. V. 1800 (for the Benares province), and sect. 19, Reg. XXVIII. 1803 (for the ceded and conquered provinces), for breaking into a house for execution of process of distraint.* Provided, however, that the responsibility for the act, and the determination whether to force an entry or not, shall rest with the officer of customs or land revenue only. Act XXXVI. 1855, sect. 4.

Proviso.

* See note to para. 1687.

What to be deemed contraband salt.

3525. No salt found stored in any house or place within the limits of customs jurisdiction mentioned in section 1 of this Act, not being salt unlawfully manufactured thereat, shall be deemed contraband, unless the quantity found shall exceed five seers in weight. Act XXXVI. 1855, sect. 5.

Penalty if police officer refuse, or neglects to attend or aid in search or seizure.

3526. Whoever, being a police officer summoned under section 2, fails to attend himself or to depute a subordinate police officer, not being below the grade of a jemadar, to attend; and any police officer who, after attending, refuses to aid in the search for, or seizure of, contraband salt, or in any way wilfully frustrates the object of the search or seizure; shall, on conviction before a magistrate, be liable, besides being dismissed from office, to a fine equal to the amount of fine that would have been leviable on the owners or holders of the salt, if it had been seized according to the information laid. Act XXXVI. 1855, sect. 6.

Penalty for vexatious search and for giving false information.

3527. Any officer of customs or land revenue, vested with power to carry into effect the provisions of this Act, who, under cover thereof, searches or causes to be searched any dwelling-house, ware-house, or other enclosed place, without reasonable grounds of suspicion that contraband salt is there manufactured or stored, shall, upon conviction before the magistrate within whose jurisdiction the offence may have been committed, be punished with fine not exceeding five hundred rupees, which fine or any portion thereof may be paid over to the party aggrieved, and, in default of payment of such fine, with imprisonment for a period not exceeding six months; and any person wilfully and maliciously giving false information, and so causing a search to be made in any dwelling-house, ware-house, or other enclosed place, to the injury or vexation of the owners, occupants, or any other person or persons whatsoever, shall, on conviction before a magistrate, be liable to the same penalty and also to imprisonment for a period not exceeding two years with or without hard labor. Act XXXVI. 1855, sect. 7.

Every case of search to be reported to superior officers.

3528. Every search under this Act, whether the result thereof be the seizure of contraband salt or otherwise, shall be reported within forty-eight hours by the officer of customs or land revenue and by the officer of police present at the search to their respective official superiors. Act XXXVI. 1855, sect. 8.

What to be deemed a manufacture of salt.

3529. The purification or refinement of impure salt, obtained in the manufacture of saltpetre, so as to produce alimentary salt, shall be deemed a manufacture of salt within the meaning of this Act and of Act XIV. 1843. Act XXXVI. 1855, sect. 9.

Penalties for importing sugar, and smuggling goods.

3530. All sugar imported into the said provinces, and all articles imported or exported without payment of the duties imposed by this Act, or in contravention of the orders which may be made and issued under the provisions thereof, and all boats, carriages and convey-

ances, and all animals used in transporting the same, shall be liable to be seized and confiscated in the manner hereinafter mentioned. Act XIV. 1843, sect. 6.

3531. All persons evading or attempting to evade the payment of the duties imposed by this Act, and all persons aiding or abetting such attempts or evasions, or in any manner acting in contravention of this Act, or of any order made and issued under the provisions thereof, and all zumeendars and other proprietors of land, or their agents, who shall wilfully connive at such attempts or evasions or aid such acts, shall, on conviction by the magistrate, within the limits of whose district the offence may have occurred, be punished by a fine not exceeding 500 rupees, and on non-payment thereof by imprisonment not exceeding six months with or without hard labor. Act XIV. 1843, sect. 7.

Penalty for evading duties.

3532. It shall be lawful for all officers of customs department to search any carriages and conveyances, and any packages, upon reasonable grounds of suspicion that such carriages, conveyances, or packages, contain any articles made subject to duty, or prohibited to be imported by this Act, and to detain all such articles as may be liable to confiscation under the provisions thereof. Act XIV. 1843, sect. 8.

Power of customs officers to search.

3533. Whenever any articles or goods shall be seized or detained under the provisions of this Act, the collector or deputy collector of land revenue or customs, within whose jurisdiction such seizure or detention shall occur, shall, with all practicable expedition, report the case for the determination of the commissioner of revenue; and it shall be lawful for such commissioner to declare such articles or goods to be confiscated, or to impose such lesser penalty in lieu thereof as to him may seem fit. Act XIV. 1843, sect. 9.

Seizures to be reported by collectors to revenue commissioner for orders.

3534. It shall be lawful for all officers in the customs department to apprehend any person upon reasonable grounds of suspicion that such person is liable to punishment under this Act, and to make him over for trial with all practicable expedition to the magistrate within whose jurisdiction the offence may occur. Act XIV. 1843, sect. 10.

Customs officers may apprehend for breach of these laws.

3535. Provided always, that any officer of the customs department who shall without reasonable grounds of suspicion search any carriage or conveyance or any package, shall, upon conviction thereof before the magistrate within whose jurisdiction the offence may have been committed, be punished with fine not exceeding 250 rupees, which fine shall be paid over to the party aggrieved, and, on non-payment of such fine, with imprisonment not exceeding three months; and provided also, that any officer of the customs department who shall under color of this Act apprehend any person, without reasonable grounds of suspicion that such person is liable to punishment under this Act, shall upon conviction before the magistrate, within whose jurisdiction the offence may have been committed, be punished with fine not exceeding 500 rupees, which fine shall be paid over to the party aggrieved, and, on non-payment of such fine, with imprisonment not exceeding six months. Act XIV. 1843, sect. 11.

Penalty for searching or apprehending without reasonable grounds.

3536. All magistrates, or persons exercising the powers of magistrate, shall be competent to receive and determine all charges against persons thus made over to them for trial on account of offences against this Act; and all sentences passed in pursuance of this Act shall

Offences cognizable by magistrate.

be open to appeal under such rules as may from time to time be laid down for the cognizance of appeals in ordinary cases. Act XIV. 1843, sect. 12.

All police and other officers to assist customs officers.

3537. All officers of police, and all officers of the government engaged in the collection of the land revenue, are empowered and required to aid and assist the officer of the customs department in the execution of this Act. Act XIV. 1843, sect. 13.

Local limit of Act.

3538. Nothing in this Act contained is to apply or to be deemed to apply to the Saugor and Nerbudda territories, or to the district of Ajmere. Act XIV. 1843, sect. 14.

NOTE.

The following rules were issued for giving effect to the above provisions under Notifications Govt. W. P. February 10, 1844, and July 21, 1852.

SECTION I.

Customs Lines and Jurisdiction.

Rule 1. The lines hereinafter specified shall be established for levying the duties authorized by Act XIV. 1843.

Rule 2. The North-West frontier line shall commence in the Himalaya range of mountains on the Jumnah, and shall run in the direction of that river till it reaches the boundary between the Banda and Allahabad districts, whence it shall run in the direction of the Southern frontier of the Allahabad and Mirzapore districts till it meets the river Soane, and there it shall terminate.

Rule 3. Custom house jurisdiction shall extend, on the left bank of the Jumnah, from its entering British territory in the Himalayas to within two miles of the chief police station of Shamli, for a distance of five miles from the bank of the river; and, on the right bank of the Jumnah, from the point where it enters British territory in the Himalaya range to the boundary of the Banda and Allahabad districts, for a distance of 15 miles from the bank or over all British territory within that space; and along the frontier of the Allahabad and Mirzapore districts for the distance of 15 miles North and East of the frontier, save and except that the cities and marts of Delhi, Bindraban, Muttra, and Agra, shall be excluded from customs jurisdiction, the space so excluded being a circle of two miles from the cotwali or chief police station of each town. Provided that where these tracts are so excluded, the breadth of the line be extended in a correspondent measure to the Westward and Southward, so that in no place the breadth be less than 15 miles, or include all British territory within that space.

Rule 4. The Hurrianah line shall branch off from the North-Western frontier line at Bullubgurh, and skirting the Northern boundary of the Jhujjur territory shall pass by Hansi, Hissar, and Sirsa, and beyond that point till it reaches the extreme limits of the British territory at or near the Sutlej river; and along this line customs jurisdiction shall extend for a breadth of ten miles, or over all British territory within that space. All dutiable articles crossing the Hurrianah line shall pay the full duty; save and except that salt, intended for consumption to the West of the North-West frontier, shall only be liable to half duty on crossing this line. All imported articles which have paid full duty on crossing the Hurrianah line shall not be liable to any further duty on crossing the North-West frontier line; and exported articles, which have paid full duty on crossing the North-West frontier line, shall not be liable to any further duty on crossing the Hurrianah line.

Rule 5. Articles brought from the Southward and Westward within customs jurisdictions, upon either of the above lines, shall be held to be imported, save and except in the case of sugar, the produce of a British province, as provided hereafter in rule 37. Articles brought from the Northward and Eastward within customs jurisdiction upon any of the above lines shall be held to be exported.

Rule 6. A line, for the levy of a duty on salt only, shall proceed from the fortress of Allahabad, due South to the Rewah frontier, and due North to the Oude frontier, and thence along the Western and Eastern

boundaries of the Oude state, till it reaches the Nepal frontier, on either side, and there it will terminate. Customs jurisdiction shall extend East of the line running due South and North from Allahabad for a breadth of 10 miles, and, where the line skirts the Oude frontier, for a distance of 13 miles from that frontier.

Rule 7. All salt passing out of the Oude territory across this line shall be held to be imported, and shall be liable to the duty of two rupees per maund, and all salt passing to the Eastward of Allahabad shall be held liable to the further duty of one rupee per maund, imposed by section 2, Act XIV. 1843.

Rule 8. The said customs jurisdiction shall not include the Ganges or Jumnah river, so as in any way to interrupt the free navigation thereof, all customs interference with the river-borne trade being hereby prohibited, further than may be required at or near Allahabad for the protection of the special further duty on salt.

SECTION II.

Customs chokees open and closed.

Rule 9. Custom house chokees may be established at any points within customs jurisdiction for the regulation of the lawful traffic, and for the suppression of contraband traffic. The chokees shall be either open or closed, and shall be disposed in single continuous lines, at such intervals, as may be necessary. The open chokees shall be established on the chief roads intercepting each line for the passing of such dutiable articles as shall have paid the prescribed duty. The closed chokees shall be entirely of a preventive nature; and shall be established to prevent the importation of sugar from foreign territories, and the passing of dutiable articles, although accompanied by rowannahs.

Rule 10. A list of the open chokees for passing dutiable articles, within each custom house jurisdiction, shall be prepared and printed in the English, Persian, Nagree, and mahajunnee languages, and kept in a convenient place, for public reference, in each open chokee, and at the tulseeldarees and thanas adjacent thereto, and in the offices of the collector and collector of customs of the district.

SECTION III.

Custom houses and custom house officers.

Rule 11. Custom houses for entering the exports and imports, and for receiving the duties authorized by the Act, shall be established at Sirsa, Hansi, Delhi, Karnal, Modul, Agra, Calpi, Rajpooor, Allahabad, and Mirzapoor.

Rule 12. The superior officers of the department charged with the collection of duties, granting of rowannahs, and superintending the preventive establishment, shall be denominated collectors, and deputy collectors; the deputy collectors shall be subordinate to the collectors, but shall be competent to perform all acts which may legally be performed by the collector. There shall be one commissioner in each division, vested with the general superintendence over the whole establishment; and there shall be in charge of each custom house a collector or deputy collector.

Rule 13. The subordinate officers who will constitute the preventive department shall be called patrols, assistant patrols, darogahs, jemadars, and chaprasis; and shall be stationed at such places along the line as may, from time to time, be found convenient. At all open chokees there shall be stationed a darogah, or jemadar, and a mohurir or weighman.

SECTION IV.

Mode of collecting the duty on dutiable articles when brought across the line.

Rule 14. No dutiable articles shall be brought across the line, unless covered by rowannahs, in duplicate, of the form [A] annexed to these rules.

Rule 15. Persons desirous to obtain such rowannahs for the passing of dutiable articles shall give in a written application at the nearest custom house. The application shall specify—

- The name and description of the goods.
- The description and quantity of carriage.
- Total weight of goods.
- Rate of duty per maund and total amount of duty.
- The name of the applicant.
- By what route or chokee proceeding.

Rule 16. A sufficient number of officers, called mooshriifs, shall be entertained at each custom house; and, on payment of the duty to the treasurer and application for the rowannah, it shall be the duty of one of these officers to see that the rowannah is duly and accurately prepared and delivered to the applicant, free of any further charge or fee whatever. Each rowannah shall bear the signature of the mooshriff by whom it has been prepared and delivered, and he shall be held responsible for its accuracy, and sufficiency, and early delivery.

Rule 17. Rowannahs shall be current for three months, from the date of issue, and shall be of no effect whatever from and after the expiration of that period, excepting in the manner provided hereafter in section V.

Rule 18. Rowannahs, granted at any custom house, shall cover dutiable articles in all customs jurisdiction, save and except that rowannahs certifying payment of the import duty on salt shall not exempt salt passing Eastward of Allahabad from payment of the further duty.

Rule 19. When dutiable articles covered by a duplicate rowannah are brought to an open chokee, the rowannah shall be delivered to the officer at the chokee; who, after comparing it with the goods, and ascertaining that it covers them, shall permit the goods to pass, at the same time dividing the two copies of the rowannah through the bordered words in the middle, himself retaining the right hand or duplicate, and delivering the original to the owner of the goods. The goods shall on no account be detained at the chokee more than twenty-four hours unless for breach of customs rules.

Rule 20. The single original rowannah, of the form A, shall be of no avail to cover dutiable articles, before they reach a line of chokees, and when brought to an open chokee, save and except in the case of dutiable articles intended to be brought across the frontier line North of Delhi, after having passed the Hurrianah line, or the reverse. In this case the single original rowannah shall be considered as proof of payment of duty on the line first crossed. Special rowannahs must be taken out from the Allahabad custom house, after payment of the further duty, to cover salt passing to the Eastward of that city.

Rule 21. Rowannahs destroyed by fire or water shall not be renewed or granted in duplicate, excepting by order of the collector of the division on proof of destruction in the manner aforesaid.

Rule 22. If the possessor of a rowannah be desirous to divide the despatch of goods covered by the rowannah, he shall, on application to the nearest custom house, obtain as many partitions of atrafee rowannahs, of the form B, as he may require, provided that a fee of two annas be paid on each partition rowannah so taken.

Rule 23. Persons wishing to export cotton, or to bring it within half a mile of the line of chokee, from the Northward and Eastward, shall make application to the collector of customs, and shall obtain from him a muafi rowannah, that is a free pass, in the form C annexed to these rules: no fee shall be demanded for the preparation of such rowannah, and it shall under no circumstances be current for more than one month from the date of issue.

Rule 24. Persons wishing to bring salt within the customs jurisdiction from the Northward and Eastward, shall obtain a muafi rowannah of similar form, on payment of a fee of two annas for each rowannah,

which rowannah shall be current for a period of 15 days from its issue, but shall not cover goods found at a greater distance than five miles from the Northern or Eastern limit of the jurisdiction.

Rule 25. The maund weight mentioned in the Act as that on which the duty is to be levied, is the maund prescribed by Reg. VII. 1833 (*i. e.* of 80 sicca weight to the seer.)

SECTION V.

Extending the currency of rowannahs.

Rule 26. Persons desirous to deposit or keep dutiable articles within the limits of customs jurisdictions for a period exceeding that for which the rowannahs may be current, may obtain an extension of their currency for a period not exceeding eight months, calculated from the date of original issue, provided they make application to the collector, or the patrol of the beat, one week before the expiration of the original term of the rowannah.

Rule 27. On such application being made, the patrol shall ascertain whether the despatch is covered by the rowannah; and, on being satisfied that such is the case, shall endorse the rowannah and note on its back the place of intended deposit and the period for which its extension is required.

Rule 28. The rowannah so endorsed shall be sent to the collector, who will superscribe thereon the period for which the rowannah is extended, and the date on which the superscription will cease to have effect.

Rule 29. The rowannah thus superscribed, signed and sealed by the collector and attested by the mooshriff, shall be delivered to the applicant, either at the custom house, or through the patrol of the beat, as may be desired by the applicant.

Rule 30. The rowannah, thus extended, shall cover the goods for the period noted in the superscription and no longer.

Rule 31. No extension shall be granted for a second period, beyond the full term of eight months from the date of original issue, excepting on clear grounds of necessity, in order to save the owners of the goods from unmerited loss; and then, only with the permission previously obtained of the collector of the division.

SECTION VI.

Illegal acts involving penalties.

Rule 32. The bringing or keeping of salt within customs jurisdiction, uncovered by a rowannah, shall subject the offenders to all the penalties prescribed by the Act.

Rule 33. The bringing of saccharine produce, sugar, or cleaned cotton, uncovered by a rowannah, within half a mile of the line of chokees established under rule 9 shall subject the offenders to all the penalties prescribed by the Act.

Rule 34. The attempt to bring dutiable articles, even when accompanied by a rowannah, across the line of chokees, except by an open chokee, shall subject the offenders to all the penalties prescribed by the Act.

Rule 35. Uncleaned cotton may be brought free of duty, and unaccompanied by a rowannah, to any mart South or West of the line of chokees or on the line of chokees; but the attempt to bring the cotton past the line, whether in a cleaned or uncleaned state, unless it be covered by a rowannah, shall subject the offenders to all the penalties prescribed by the Act.

Rule 36. Provided that persons having in their possession, uncovered by a rowannah, salt not exceeding one seer, or sugar or saccharine produce not exceeding five seers, and intended for private consumption, shall not be held liable to the penalties prescribed in the Act, and are hereby exempted therefrom. Salt not exceeding five seers uncovered by a rowannah found in the possession of a person

liable to confiscation, but the possessor shall not be liable to the penalties prescribed by section 7, Act XIV. 1834.

Rule 37. Provided also that sugar, the produce of British territory, covered by a certificate of origin, prescribed by section 3, Act XXXII. 1836, if brought across the line from British territory, lying on the South and West of the line, shall not be held prohibited.

Rule 38. Dutiable articles brought to an open chokee shall be held to be covered by a rowannah in duplicate or single, as may be requisite under rule 20, if they agree with the description in the rowannah in all essential particulars, and if there be no greater excess of weight than five per cent. of the whole despatch, and if the rowannah shall be current, and shall not have been previously used for passing other goods.

Rule 39. If the excess in weight be more than five per cent. above what is entered in the rowannah, but not more than 15 per cent. of the whole despatch, or if the discrepancy between the goods and the rowannah be evidently the result of accident or ignorance, and there be no ground for suspecting fraud, a greater penalty than double duties on the whole despatch shall not be awarded by the commissioner.

Rule 40. Whenever persons shall have become liable to the penalties under the declaration in these rules, evidently from inadvertence or ignorance and without any attempt at concealment or fraud, a greater penalty than double duties on the whole despatch shall not be awarded by the commissioner.

CHAPTER X.

OF MILITARY STORES.

Arms and military stores not to be transported except under a pass.

3539. The transportation of cannon, and of all descriptions of fire-arms or military stores, excepting on account of or under a pass from the British government, being prohibited, all officers of the customs are required to seize all such cannon, arms, or military stores, as are attempted to be transported in disobedience of this prohibition. The cannon, arms, or stores, so seized, are liable to confiscation. This rule, however, is not to be considered as applicable to fowling pieces, pistols, swords, or any other arms, which are in the possession of individuals evidently for private use. Reg. IX. 1810, sect. 31.

Arms, ammunition, and military stores, not to be exported from Company's territories without a pass.

3540. Arms, ammunition, and military stores (with the exception of arms in the possession of individuals for private use) are not to be exported, or otherwise taken from the territories of the East India Company, without a license from a public officer or officers to be indicated by the government for the purpose of granting such licenses, and a full compliance with all such rules and conditions as may be prescribed for the guidance of such officer or officers, in regard to such exports, by the government. And any arms, ammunition, or military stores, which any person exports, or attempts to export, or take as aforesaid, contrary to this Act, are to become thereby forfeited, on the award of the officer or officers authorized as aforesaid to grant licenses, or the collector of customs; and every person offending in the premises contrary to this Act, is liable, on conviction before a magistrate, to a penalty not exceeding 500 rupees. Act XVIII. 1841, sect. 1.

Penalty for offending against this prohibition.

3541. The magistrates in the Western provinces are authorised to grant licenses for the exportation of arms, ammunition, and military stores, and to exercise the powers specified in Act XVIII. 1841. In ordinary cases the magistrate must report direct to the secretary to government in the judicial department the circumstances under which application is made to him for license for the export of arms, ammunition, or military stores; and shall await the orders of government before issuing such license. In cases of emergency, where the export may be apparently unobjectionable and the exporter would be exposed to inconvenience by the delay of a reference, the magistrate is empowered to grant the license without delay, at the same time reporting to the government the circumstances which induced him to grant it without previous reference. The license may be drawn out in any convenient form, but must sufficiently particularise the nature of the despatch which it covers. No fee can be demanded for the preparation or issue of the license. Notification Govt. *W. P.* March 30, 1850.

Magistrates *W. P.* to exercise powers under above provisions, reporting to government applications for licenses to export.

3542. Any person, who collects or keeps in one place, or within places not exceeding 3 miles in distance from each other, any quantity of gunpowder exceeding 50 pounds, without a license from such officer as aforesaid, is liable, on conviction before a magistrate, to a penalty not exceeding 500 rupees; and such gunpowder is to become forfeited on the award of the officer or officers authorized to grant licenses as aforesaid, or the collector of customs. Act XVIII. 1841, sect. 2.

Penalty for keeping more than 50 pounds of gunpowder without license.

3543. It is lawful for the government to allow at any port or ports the exportation of arms, ammunition, and military stores, as aforesaid, without any such license as aforesaid, as they deem expedient. Act XVIII. 1841, sect. 3.

Government may allow exportation of military stores.

3544. The chief magistrate of Calcutta was appointed, under the above provisions, to be the officer for the presidency of Fort William, for the purpose of granting licenses for the exportation of arms, ammunition, or military stores, from Calcutta. It was not the intention of this appointment to preclude the collector of customs from allowing the exportation of arms, ammunition, or military stores, when accompanied by an order of government according to the practice heretofore in observance. Notification Govt. *Bengal*, February 9, 1842.

Chief magistrate of Calcutta to grant licenses for exportation of military stores.

CHAPTER XI.

OF UNLAWFUL POSSESSION OF SOLDIERS' NECESSARIES, &c.

3545. Any person, who shall knowingly detain, buy, exchange, or receive from any soldier or deserter, or any other person, on any pretence whatsoever, or shall solicit or entice any soldier, or shall be employed by any soldier, knowing him to be such, to sell any arms, ammunition, clothes, or military furniture, or any provisions, or any sheets, or other articles used in barracks, provided under barrack regulations, or regimental necessaries, or any article of forage provided for any horses or other beasts belonging to or used in the East India Company's service; or who shall have in his or her possession or keeping any such arms,

Penalty on purchasing soldiers' necessaries, clothes, &c.

ammunition, clothes, furniture, provisions, spirits, articles, necessities, or forage, as aforesaid, and shall not give a satisfactory account how he or she came by the same; or shall change the color of any clothes as aforesaid; shall forfeit for every such offence any sum not exceeding two hundred Company's rupees, together with the treble value of all or any of the several articles of which such offender shall so become possessed. And if any person, having been so convicted, shall afterwards be guilty of any such offence, and shall be convicted thereof by one or more justices of the peace, every such offender shall for every such offence forfeit any sum not exceeding two hundred Company's rupees but not less than fifty Company's rupees, and the treble value of all or any of the several articles of which such offender shall have so become possessed, and shall, in addition to such forfeiture, be liable to be imprisoned only, or imprisoned and kept to hard labor, for any term not exceeding six calendar months, as the convicting justice or justices shall think fit. And upon any information against any person for a second or any subsequent offence a copy of the conviction, certified by the proper officer having the care or custody of such conviction, or any copy of the same, proved to be a true copy, shall be sufficient evidence to prove a conviction of the former offence. And if any credible person shall prove on oath or solemn declaration before a justice of the peace, or person exercising the like authority, a reasonable cause to suspect that any person has in his or her possession, or on his or her premises, any property of the description herein-before described, with respect to which any such offence shall have been committed, the justice, or person exercising like authority, may grant a warrant to search for such property as in the case of stolen goods; and, if upon search any such property shall be found, the same shall and may be seized by the officer charged with the execution of such warrant, who shall bring the offender in whose possession the same shall be found before such justice or other person to be dealt with according to law. 12 and 13 Vict. cap. 43, sect. 52 (mutiny Act for military forces of the East India Company).

Second offence.

Warrant for search on suspicion.

Made of recovering penalties.

3546. All penalties and forfeitures by this Act imposed may and shall be sued for and be recoverable in any court of record at the said presidencies, or in any other court in India, in which, under any laws made or to be made in India, the penalty would be recoverable, if the same had been incurred by the offender in breach of any other law: provided always, that no action shall be brought or prosecution carried on by virtue of this Act for any such penalties or forfeitures as aforesaid, unless the same be commenced within six months after the offence is committed. 12 and 13 Vict. cap. 43, sect. 68.

These provisions to be enforced by mofussil magistrates.

3547. Magistrates of the Company's criminal courts are bound to act under these provisions, and have power to enforce the penalties, although no Act of the local legislature has been passed for the promulgation of the Act of parliament. C. O. No. 50 of vol. 4. This circular was issued in accordance with the opinion of the advocate general, who referred to sect. 36 of 3 and 4 Vict. cap. 37, and held that its provisions were still in force, notwithstanding the promulgation of 12 and 13 Vict. cap. 43. But sect. 74 of the latter Act distinctly repeals the former, and the section above given supersedes the former provisions.

3548. One moiety of any penalty, not including any treble value of any articles adjudged or recovered under the provisions of this Act, shall go to the person who shall inform or sue for the same; and the remainder of the penalty, together with the treble value of any article, or, where the offence shall be proved by the person who shall inform, the whole of the penalty, shall be paid to the military secretary of the Government of the presidency, to which the court by whom the penalty shall be adjudicated shall be subject; and the court which shall adjudge any penalty under this Act shall immediately report the same to the said secretary. 12 and 13 Vict. cap. 43, sect. 69.

One moiety to informer; and remainder to military secretary to government.

3549. In all cases where any oath is hereby required to be taken, or any person is hereby required to be sworn, a solemn declaration or affirmation may be substituted, if by the laws for the time being in force in India such declaration or affirmation would be allowed to be substituted in the place of an oath in case the party were about to depose as a witness in a civil action in any of the supreme courts of the presidencies. And any persons wilfully and knowingly giving false testimony on oath, or solemn declaration or affirmation, in any case wherein such oath or solemn declaration or affirmation shall have been made for the purpose of this Act, shall be deemed guilty of wilful and corrupt perjury, and being thereof duly convicted shall be liable to such pains and penalties as by any law in force in England, or by any law in force in India, any persons convicted of wilful and corrupt perjury are subject and liable to; and every commissioned officer convicted before a general court martial of perjury shall be cashiered; and every soldier or other person amenable to the provisions of this Act found guilty thereof shall be punished at the discretion of a general or other court martial. 12 and 13 Vict. cap. 43, sect. 70.

Punishment for giving false testimony.

BOOK V.

OF OFFENCES AGAINST THE PERSON, OR THE PUBLIC PEACE

CHAPTER I.

OF PERSONS OF BAD CHARACTER.

SECTION I.

OF NOTORIOUS OFFENDERS.

Police officers to apprehend all notorious robbers, and receivers.

3550. It is the duty of the darogahs of police to apprehend and forward to the magistrate all persons residing within their respective jurisdictions, who are notorious as dacoits and robbers of any denomination, or as house-breakers, thieves, or receivers of stolen property. Reg. XX. 1817, sect. 20, cl. 1.

On receiving credible information of any such person, the darogah is to make a secret and summary inquiry; and if necessary to apprehend him;

and, as he accounts for himself, to discharge him on bail or to forward him to the magistrate;

3551. On any written charge being preferred to a police darogah against individuals within his jurisdiction, of their being notorious robbers, burglars, thieves, or receivers of stolen property; or on the darogah's receiving credible information of such person being within his jurisdiction; the darogah, or other police officer presiding in the thana jurisdiction, is, previously to the apprehension of the accused, to make such secret and summary inquiry in the neighbourhood as is practicable, without endangering his escape, in regard to his general character and means of subsistence; and, if there appear substantial grounds to believe that the charge or information is well founded, the darogah or other police officer is to apprehend the person suspected, and is to examine him without oath regarding his name, connections, place of residence, occupation, and means of livelihood. If on such examination, and any further immediate enquiry which is practicable, there appear to be strong grounds for presumption, that the charge or information against the prisoners is unfounded or greatly exaggerated, and the prisoner tenders sufficient bail for his appearance before the magistrate, such bail is to be accepted; or in failure thereof, as well as in all cases wherein the examination of the prisoner tends to confirm the truth of the charge or information against him, he is to be forwarded under custody to the magistrate, together with a written report of the enquiry, including such particulars as are necessary to enable the magistrate to form a just comprehension of the merits of the case. Reg. XX. 1817, sect. 20, cl. 2.

3552. The foregoing rule is not to be construed as authorizing the police officers to make the sooruthals and enquiries regarding character provided for in the next clause, except under the special orders of the magistrate. Reg. XX. 1817, sect. 20, cl. 3.

but the police officers cannot hold sooruthals in such cases.

3553. Whenever persons are apprehended on suspicion of bad livelihood, or information of notorious character only, the magistrate is, with the least possible delay, to make such enquiry as appears necessary to ascertain the grounds and truth of such suspicion or information; and if the party suspected, or informed against, is able to give sufficient bail for his appearance during the magistrate's enquiry, he is to be admitted to bail accordingly. C. O. No. 81 of vol. 1.

Magistrate to order enquiry without delay and to admit prisoner to bail.

3554. Whenever a police officer receives instructions from a magistrate to make a local inquiry and sooruthal, for the purpose of ascertaining the character of any person of bad fame or suspicious livelihood, the darogah is to proceed himself, or is to depute the mohurir or jemadar of the thana, to the village, in which the suspected person has been known to reside; and the darogah, mohurir, or jemadar, when not otherwise specially instructed by the magistrate, is to summon four or more of the principal inhabitants (not being females) or of the middling classes residing in the village, and is to question them without oath respecting the present and former place of residence of the prisoner, his general character, means of subsistence, property in ploughs, land, cattle, and other goods and chattels; he is also to require them to state whether the individual suspected associates with persons of bad character, robbers, or armed men; and, if so, the names of such persons; whether he is frequently absent from his house or place of residence at night, without sufficient cause; whether his expenses are in proportion to or exceed his means; whether any person in the village bears the prisoner enmity; and whether the prisoner was ever before apprehended; and, if so, on what account. Reg. XX. 1817, sect. 20, cl. 4.

Police officers how to proceed when ordered to make local enquiry.

3555. The sooruthal, containing the result of the enquiry above directed, is to be signed by the persons assembled; and, if the result of the enquiry is favourable to the character of the prisoner, the darogah is only to forward his report, and to await the orders of the magistrate; but, if unfavourable, a sufficient number of the subscribing witnesses, not in any case exceeding four unless under the special orders of the magistrate, are to be immediately required to execute recognizances to appear and give evidence in the foudaree court. Reg. XX. 1817, sect. 20, cl. 5.

The sooruthal if favorable is alone to be forwarded; if unfavorable, witnesses are to be bound over to appear.

3556. Whenever a person of bad character is liberated from custody, or is released from jail after the expiration of a specific sentence of imprisonment, and the magistrate is of opinion, with reference to the character of the prisoner, that his future conduct should be watched, such individual is to be sent to the thana division, in which his habitation is situated, and is to be released by the officers of the police in the presence of the munduls, patwaris, and other headmen and watchmen of the village to which the person liberated belongs, who are to be enjoined to afford him all practicable aid in procuring an honest livelihood; but at the same time to keep a vigilant inspection over his conduct and mode of living; and to give timely information to the police officers of the jurisdiction, in the event of his being absent from his village at night without giving notice of his intention;

Persons of bad character, liberated from custody or discharged from jail, are to be released in the presence of the headmen and watchmen of the village, who are to be enjoined under a penalty to keep a vigilant inspection over their conduct and mode of living.

or of his associating with individuals of bad reputation ; or of his ceasing to labor or to obtain a livelihood by creditable means ; in all which cases they are to be held responsible, and liable to the penalty stated in the next clause, unless they give due information of the circumstances to the thana. Reg. XX. 1817, sect. 20, cl. 6.

Names of the headmen before whom they are released to be reported to magistrate.

Specification of penalty for not giving required information.

Persons suspected of being engaged in a combination for robbery and murder to be made over to thuggee officers.

3557. On the occasion of releasing a prisoner, under the provisions of the foregoing rules, the police darogah is to report to the magistrate the names of the munduls and other headmen of the village present at the time of the prisoner's discharge ; and, if the person released be hereafter convicted of any criminal offence, and it be established that the headmen of the place neglected to furnish the information required by the preceding clause, they are to be liable to the payment of a fine not exceeding 100 rupees from each individual, commutable in default of payment to one month's confinement in the civil jail. Reg. XX. 1817, sect. 20, cl. 7.

3558. Persons accused of robbery and murder, or of either of those crimes, under circumstances justifying a suspicion that the crimes have been perpetrated by persons engaged in a systematic combination for such purposes, are to be made over for trial to the officers of the thuggee department. C. O. No. 92 of vol. 3. *L. P.*

SECTION II.

OF SECURITY FOR GOOD BEHAVIOUR.

Magistrate to confine in default of security for one year.

Sureties to be responsible for same period.

Session judge need not revise such cases except on appeal.

and cannot enhance the sentence :

he may always examine proceedings ; but cannot revise except on appeal.

3559. Whenever the magistrates, under the authority vested in them by the existing regulations, require security for the good behaviour of a prisoner, they are (in all cases in which they judge it safe to do so) to provide in their order for the release of the prisoner at the end of a definite period not exceeding 12 months. Reg. VIII. 1818, sect. 8, cl. 1.

3560. The period to be fixed for the responsibility of the sureties, in such cases, is to correspond with the term limited by the magistrate's order for the prisoner's detention in the event of his not furnishing the required security. Reg. IV. 1825, sect. 5.

3561. It is not necessary for the session judge to revise the proceedings of the magistrate in such cases, except on petitions [of appeal] presented by the prisoners ; when he is directed and empowered to call for the proceedings, and on his own authority to annul, modify, or confirm, the orders of the magistrate.(a) Reg. VIII. 1818, sect. 8, cl. 2.

3562. When a case is brought before a judge by petition from a security prisoner, there is no discretion to enhance the period of detention. Const. No. 347.

3563. The above provision is not to be construed into a prohibition to the judge to call for the proceedings, when no petition is presented to him : but he cannot revise such cases, except on appeal by the parties. Const. No. 460. C. O. No. 113 of vol. 3. See also paras. 1849, and 1855.

(a) It is to be remembered that Act XXXI. 1841 has repealed those parts of the Bengal code, which concern the powers and duties of the criminal courts in respect to appeals and revision of sentences of a lower court by a higher. The existing rules, therefore, regarding appeals and revision of sentences apply to cases of this nature ; and consequently a prisoner, required to give security for good behaviour, must present his petition of appeal within one month from the date of the magistrate's order.

3564. In all other cases, in which the magistrate is of opinion, from the evidence to general character adduced before him, that the prisoner is by habit a robber, burglar, or thief, or a vender or receiver of stolen property knowing the same to have been stolen, of a character so desperate, dangerous, or irreclaimable, as to render his release without security, at the expiration of the limited period of 12 months above specified, hazardous to the community, the magistrate is to record his opinion to that effect with an order specifying the amount of security which should, in his judgment, be required from the prisoner, as well as the number of sureties, and the period for which the sureties should be responsible for the prisoner's good behaviour. Reg. VIII. 1818, sect. 9, cl. 1.

If magistrate thinks that the prisoner ought not to be released at the end of one year, he is to specify the amount of security, the number of sureties, and the period of their responsibility, required;

3565. The whole of the proceedings are then to be laid before the session judge, who, after examining them, and requiring any further evidence, which he judges necessary, is competent, from his own authority, to pass orders on the case, either confirming, modifying, or annulling the orders of the magistrate, as he judges proper and equitable. Reg. VIII. 1818, sect. 9, cl. 2.

and to lay the proceedings before the session judge, who is to confirm or modify such order.

3566. In such cases the magistrate should not sentence to the portion of time, which is within his competence, and seek the orders of the session judge for an addition; but should send up the case at once to the sessions, with his opinion why the orders of the sessions court are required. When the magistrate passed sentence for one year, and referred the case for two additional years, and the judge passed an order in accordance with the opinion of the magistrate, the court allowed the former order to stand, but reversed the latter as illegal. Reports *L. P.* 1856, part 2, pages 157 and 159.

But in such cases the magistrate is to pass no sentence, but simply to refer the case.

3567. Under the above provision the proceedings in all cases of prisoners in confinement under requisition of security by a magistrate for their good behaviour, for any period exceeding 12 months, must be laid before the session judge. Const. No. 517.

The above applies whenever magistrate requires security for more than one year.

3568. A commitment cannot be made on a charge of being a bad character. *N. A. R.* vol. 6, page 76.

Commitment cannot be on such charge.

3569. In all such cases, if the session judge does not think it safe to direct the immediate discharge of the prisoner, he is to fix a limited period for the provisional detention of the prisoner, in the event of his not giving the security required from him; which period is never to exceed 3 years, except in the cases specified in the following section. Reg. VIII. 1818, sect. 9, cl. 3.

Judge to fix period of detention, in default of security, not exceeding 3 years.

3570. When a magistrate has sentenced a person to imprisonment in default of security, without providing that the case should be submitted to the session judge for sanction to his detention beyond one year, it is not competent to the judge to enhance the original sentence on the subsequent proposition of the magistrate. *N. A. R.* vol. 6, page 76.

If the magistrate wishes to take security for more than one year, he must pass such order in the first instance.

3571. In cases in which the session judge, (a) from the proceedings before him, considers the prisoner to be a notorious gang-robber (dacoit), or other notorious robber of whatever

Session judge may order a prisoner to be con-

(a) The original text vests these powers in the judge of circuit. Constructions Nos. 771 and 828 declare that the session judge is equally competent to exercise them. The sudder court will also enforce these provisions if there is sufficient evidence on the record. Reports *L. P.* 1856, part 1, page 910.

fined indefinitely in default of security ;

denomination, being of desperate or dangerous character, whom it would be unsafe to set at liberty without substantial security for his future good behaviour, and who, therefore, in default of giving such security, should be confined indefinitely, in pursuance of sect. 9, Reg. VIII. 1808 [*i. e.* until the required security is given to the satisfaction of the sessions court, upon the report of the magistrate, unless from the prisoner's behaviour during his confinement, or other circumstances, there appears to be sufficient ground of assurance to warrant his discharge on a mochulka under the provision made for that purpose by sect. 11, Reg. LIII. 1803], he is to declare and order the same accordingly. Reg. VIII. 1818, sect. 10, cl. 1. Reg. III. 1819, sect. 2.

but such cases are always to be reviewed by the session judge at the end of 3 years.

3572. In these cases, however, the session judge is nevertheless to fix the amount of the security to be required from the prisoner, and is to provide in his order that, if the prisoner is not able to furnish the security required within the period of 3 years from the date of such order, the prisoner in question is to be again brought up, on the expiration of the period of 3 years above specified, before the session judge ; whose duty it will be, after examining the proceedings and making any further enquiries he may judge necessary, to determine whether the prisoner shall then be released, or whether he shall be again remanded, either on the same terms as before, or on any modified terms favorable to the prisoner. Reg. VIII. 1818, sect. 10, cl. 2.

In such cases the period of responsibility of sureties is to be confined to 3 years ; but they are to deliver up the individual at the end of that period ;

3573. With a view to encourage respectable individuals to become sureties for prisoners of the description alluded to in the foregoing clauses of this section, the period for which the sureties are to be responsible for the good behaviour of the individuals is, in all cases, to be limited to 3 years, subject however to the condition that the sureties, at the expiration of that period, are to be bound to deliver up the individuals to the magistrate. Reg. VIII. 1818, sect. 10, cl. 3.

and then, if they are willing, to renew their responsibility ;

3574. When individuals are surrendered by their sureties under the foregoing rule, the magistrate is to ascertain whether the former surety is willing again to become responsible for the future good behaviour of the prisoner, for a further period not exceeding 3 years ; and in the event of the surety being willing to become again responsible for the conduct of the prisoner, the magistrate is to accept the security, and to release the prisoner on the same terms as before. Reg. VIII. 1818, sect. 10, cl. 4.

if unwilling, the individual is to be brought before the session judge.

3575. If the former surety declines to become again responsible for the prisoner, and the prisoner is unable to furnish any other sufficient security, the magistrate is to detain him in custody, and to cause him to be brought before the session judge for such further orders as he considers it proper to pass in the case. Reg. VIII. 1818, sect. 10, cl. 5.

No person is to be required to give security solely on suspicion of having committed a particular offence ;

3576. The criminal courts are prohibited from requiring security for good behaviour from persons charged with, but not convicted of, a specific offence, on the grounds of strong suspicion of their having committed such offence, independently of any proof of notorious bad character. Reg. VIII. 1818, sect. 2, cl. 1.

however strong the presumption may be.

3577. The court held that a magistrate was not justified in demanding security from prisoners merely on the ground of their undoubted participation in a dacoity. If there is

proof of such participation, they should be committed ; if not, the bare suspicion of it would not warrant the demand of security. Reports *L. P.* 1855, part 2, page 852.

3578. The foregoing rule is not to be construed to prevent the session judges, or the nizamat adawlut, from requiring security from prisoners, who are acquitted on the trial before those courts of the specific charge brought against them, provided such prisoners appear, from the evidence on the proceedings, to be of notoriously bad or dangerous character. In cases of this description, the session judges, or the nizamat adawlut, are to issue such orders as they judge necessary under the rules contained in sections 9 and 10 of this regulation. Reg. VIII. 1818, sect. 2, cl. 2.

But it may be required from an acquitted prisoner, if he is proved to be of notoriously bad character.

3579. When the session judge acquitted a prisoner on the charge of forgery, but required from him security for good conduct on the ground that the evidence on the trial proved him to be a known bad character ; the court held that the provisions of Reg. VIII. 1818 are applicable to such persons only as are shown to be habitual participators in robbery or theft or the sale or receipt of stolen property. Reports *L. P.* 1854, part 1, page 311.

These provisions are applicable only to habitual thieves or receivers :

3580. A session judge required security from a prisoner, whom he acquitted of dacoity, as a dangerous character and notorious former of gangs of dacoits, being in the habit of getting men to commit dacoities with the intention of informing against them. The court held that this did not amount to proof of notoriously bad or dangerous character within the meaning of the regulation, and cancelled the order requiring security, informing the judge that he could of course direct further enquiry to be made by the magistrate in respect to the prisoner's general character and means of livelihood ; and pass such fresh order as he might deem just and proper upon consideration of the evidence which might be recorded by the magistrate. *N. A. R.* vol. 6, page 262.

and cannot even be applied to the formers of gangs of dacoits.

3581. When a session judge thinks it proper to act under the preceding clause, he ought to give prisoners the opportunity of summoning the witnesses, whom they may desire to have heard on the subject of their character and livelihood ; and ought not to pass orders till after full consideration of the statements of such witnesses. And it is not enough to record that there is sufficient evidence of bad character on the proceedings ; but the particular statements or parts of the evidence, from which this conclusion is drawn, ought to be distinctly referred to in the session judge's order. *N. A. R.* vol. 6, page 154.

The judge must give the accused opportunity to call evidence in his defence.

3582. The session judge is competent to direct an investigation to be made into the character of a prisoner, acquitted of the specific charge on which he has been tried, as a preliminary to the call for security. Const. No. 1180.

Session judge may originate investigation into character.

3583. It is not competent to a magistrate, or to a court of sessions, to add a demand of security to a specific sentence passed on a prisoner by themselves ; nor can the session judge require security from a prisoner, to whom a specific punishment has been adjudged on a regular trial by a magistrate. *C. O.* No. 250 of vol. 1. Const. No. 1195.

Security cannot be required in addition to a specific sentence of punishment.

3584. Whenever a magistrate or joint magistrate sees grounds for detaining in confinement, under requisition of security for good behaviour, a prisoner acquitted and ordered to be

Magistrate how to proceed if he wishes to detain on

security persons
acquitted at the
sessions.

discharged by a court of sessions, he is required immediately to certify the same, together with a copy of his proceedings, for the information of the session judge. C. O. No. 201 of vol. 1.

The magistrate
may always exer-
cise his discretion
in such cases.

3585. A session judge proposed to interdict the magistrate from enquiring into the characters of persons acquitted at the sessions, except upon new grounds totally irrespective of those on which they had been committed to the sessions. But the court held that it was not competent to them to issue any such general restrictive directions. A magistrate must be allowed to act on the discretion vested in him by the law; and control over his orders in regard to security, which must be issued upon further evidence than is before the session judge on a trial, can be exercised by the session court only when they are appealed against. It is for prisoners to appeal against the orders for their detention on security in regular course. In such cases the prisoners must be allowed the option of giving bail pending the enquiries into their means of livelihood and character; but a magistrate may always, and might often with great propriety, send a prisoner, unable to give bail, under a guard to be present at the enquiry in the mofussil, and to suggest evidence to be summoned on his own part. Letter N. A. No. 632, July 8, 1851.

Security is not to
be required without
proof of recent bad
livelihood.

3586. The confinement of an individual in jail, on a requisition of security for good conduct, without proof of recent circumstances warranting the imputation of dishonest livelihood at the time of apprehension, is a manifest act of injustice. The session judge is particularly required to report any deviation from these orders. C. O. Nos. 9 and 26 of vol. 2.

Previous convic-
tions no cause for
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3587. As a general rule previous convictions should not be considered in judging of a person's character. C. O. Sup. Pol. L. P. No. 5 of 1847.

What particulars
are to be fixed in
the order requiring
security.

3588. In every instance, in which security for good behaviour is required, whether by the magistrates, the courts of sessions, or the nizamut adawlut, the amount of the security, the number of sureties (to be fixed at the discretion of the magistrate or of the court requiring the security), and the period of time for which the sureties are to be responsible for the good conduct of the prisoner, are to be fixed and determined. Reg. VIII. 1818, sect. 3.

Period of deten-
tion in default of
security to be spe-
cifically fixed.

3589. The period of time, during which such prisoners may be made liable to detention in custody, on failure to furnish the security required from them, is to be specifically fixed in every instance, except in those cases, in which the prisoner appears to be a notorious robber, of a character so dangerous as to render his release, without security, evidently unsafe and objectionable. Reg. VIII. 1818, sect. 4.

Magistrate to
use caution and
discretion in re-
quiring security.

3590. Adverting to the large number of persons detained by a magistrate merely on suspicion of being bad characters, without any direct evidence to the fact, and in some cases merely because they had been before apprehended or convicted of specific offences, the nizamut adawlut required magistrates to exercise the powers vested in them by the above provisions with due caution and discretion. C. O. No. 245 of vol. 1.

Rule for fixing
amount of security.

3591. Magistrates are to limit their requisitions of security for good behaviour to such sums, as it may appear equitable to recover in the event of the conditions of the engagement

not being performed; and they are to be careful in ascertaining, that the sureties accepted are sufficiently responsible to make good the amount eventually demandable from them. C. O. No. 70 of vol. 1.

3592. Distance, or residence in another district, forms no ground for the rejection of the security of a person tendered by a prisoner under orders to give security for good conduct. Const. No. 920.

Sureties not to be rejected on account of distant residence.

3593. To put a stop to the practice of persons, for a pecuniary consideration, making themselves answerable for the conduct of men of bad character, over whom they have no influence, in the expectation that whatever may be the future conduct of those for whom they are responsible, their security will be regarded as nominal and not put into execution,—it is directed that whenever a person, who has given security for his good behaviour, is convicted of a serious criminal offence, and has not been delivered up by his surety, the latter is to be called upon to show cause why the penalty, to which he is liable by his engagement, should not be enforced; and that, unless satisfactory reason is assigned against enforcing the security bond, in whole or in part, it is to be enforced by the magistrate. Magistrates are to make known the above rule to all persons, who offer themselves as sureties for the conduct and appearance of men of suspicious character in their respective jurisdictions. C. O. No. 70 of vol. 1. Const. No. 734.

Penalty to be enforced whenever the conditions of the security bond are not fulfilled.

3594. All muchalkas and security-bonds, which by force of any Act or regulation may be taken by criminal courts of the East India Company, or by magistrates or joint-magistrates, for keeping the peace or for good behaviour, may be enforced in the manner prescribed by sections 8 and 9 of this Act (*See paras. 3847 and 3848*). Act V. 1848, sect. 11.

Penalty of bond how to be enforced.

3595. Individuals, who become sureties for the good behaviour of prisoners, may at all times obtain a discharge from their future responsibility by delivering up, or causing to be delivered up, the persons for whom they have become responsible to the proper magistrate or police officer: and they are not to be made responsible for the amount of the security-bond, in cases in which they give timely information to the magistrate, that the individuals, for whom they have become sureties, have taken to bad courses, and use every exertion in their power to the satisfaction of the magistrate for the apprehension and surrender of such individuals. Reg. VIII. 1818, sect. 7.

Sureties how to obtain release from responsibility. Penalty not to be enforced if they give timely information.

3596. In cases wherein it is necessary to enforce a penalty-bond entered into by a surety for good behaviour, and it appears that the surety is dead, the magistrate, in enforcing the engagement as directed above, is to proceed against the heirs and executors of the surety to the extent of any property belonging to the deceased, which has come to their hands. Under this rule, the magistrate should be careful that the penal engagement, entered into by a surety, specifies the responsibility, to which his heirs and executors are liable in the event of his demise. But in all cases when the surety dies, his representative has the option of obtaining a discharge by delivering up the party engaged for, as provided above with respect to the surety himself. In carrying the above instructions into effect, when he does not receive any special orders from the session judge or the nizamut adawlut, the magistrate is

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Security-bond to be prepared accordingly.

How the heirs may obtain release from responsibility.

In such cases magistrate may remit the penalty in whole or in part.

security persons
acquitted at the
sessions.

discharged by a court of sessions, he is required immediately to certify the same, together with a copy of his proceedings, for the information of the session judge. C. O. No. 201 of vol. 1.

The magistrate
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cise his discretion
in such cases.

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3593. 'To put a stop to the practice of persons, for a pecuniary consideration, making themselves answerable for the conduct of men of bad character, over whom they have no influence, in the expectation that whatever may be the future conduct of those for whom they are responsible, their security will be regarded as nominal and not put into execution,—it is directed that whenever a person, who has given security for his good behaviour, is convicted of a serious criminal offence, and has not been delivered up by his surety, the latter is to be called upon to show cause why the penalty, to which he is liable by his engagement, should not be enforced; and that, unless satisfactory reason is assigned against enforcing the security bond, in whole or in part, it is to be enforced by the magistrate. Magistrates are to make known the above rule to all persons, who offer themselves as sureties for the conduct and appearance of men of suspicious character in their respective jurisdictions. C. O. No. 70 of vol. 1. Const. No. 734.

Penalty to be enforced whenever the conditions of the security bond are not fulfilled.

3594. All muchalkas and security-bonds, which by force of any Act or regulation may be taken by criminal courts of the East India Company, or by magistrates or joint-magistrates, for keeping the peace or for good behaviour, may be enforced in the manner prescribed by sections 8 and 9 of this Act (*See paras. 3847 and 3848*). Act V. 1848, sect. 11.

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Sureties how to obtain release from responsibility. Penalty not to be enforced if they give timely information.

3596. In cases wherein it is necessary to enforce a penalty-bond entered into by a surety for good behaviour, and it appears that the surety is dead, the magistrate, in enforcing the engagement as directed above, is to proceed against the heirs and executors of the surety to the extent of any property belonging to the deceased, which has come to their hands. Under this rule, the magistrate should be careful that the penal engagement, entered into by a surety, specifies the responsibility, to which his heirs and executors are liable in the event of his demise. But in all cases when the surety dies, his representative has the option of obtaining a discharge by delivering up the party engaged for, as provided above with respect to the surety himself. In carrying the above instructions into effect, when he does not receive any special orders from the session judge or the nizamat adawlut, the magistrate is

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In such cases magistrate may remit the penalty in whole or in part.

authorized to exercise his discretion in not enforcing the penalty, either wholly or partially, when the circumstances of the case appear to call for indulgence, or any equitable reason exists for dispensing with the penalty. C. O. No. 74 of vol. 1.

Magistrate may release persons confined by magistrate in default of security;

3597. The magistrates are empowered at all times to exercise their discretion in releasing, without reference to any other authority, prisoners confined under requisition of security for their good behaviour, whether by their own orders, or by those of any other person discharging the functions of a magistrate; provided the magistrates are of opinion, from whatever cause, that such prisoners can be released without hazard to the community. Reg. VIII. 1818, sect. 5, cl. 1.

but he is to report the case, if security has been required by a higher court.

3598. In cases in which a magistrate is of opinion, for whatever reason, that any prisoner confined under requisition of security for good behaviour, by order of the sessions court or nizamut adawlut, can be safely released without such security, the magistrate is to make an immediate report of the case, with his sentiments, for the orders of the court, which has required the prisoner to furnish security previously to his release. Reg. VIII. 1818, sect. 5, cl. 2.

Judge how to proceed on receiving such report.

3599. In all cases of such reports being made by the magistrate to the sessions court, the judge is to call the prisoner before him, and to examine the proceedings held upon his trial, as far as is necessary to ascertain the grounds on which the prisoner was required to find security; after which, and duly considering the circumstances stated in the magistrate's report, if he concurs with the latter in opinion that the prisoner ought to be released on his muchalka without security, he is to direct the same accordingly. Reg. LIII. 1803, sect. 11, cl. 2.

Circumstances to be considered by magistrate and judge in the exercise of such discretion.

3600. In the exercise of this discretion, the magistrates and session judges are of course to give due consideration to the general character of the prisoner as far as ascertainable, and the consequent risk to be apprehended from his being released without security for his future good conduct. Reg. LIII. 1803, sect. 11, cl. 3.

Mode of report to be made by magistrate in such cases.

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1. the name and designation of the prisoner;
2. the sessions at which he was brought to trial;
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4. the crime with which he was charged;
5. the date of the warrant or order requiring him to give security;
6. the ground on which the magistrate proposes his discharge without security on the execution of a muchalka.

C. O. No. 100 of vol. 1.

Assistant, vested with special powers, is not competent to require security for good behaviour.

3602. An assistant, vested with the special powers described in sect. 2, Reg. III. 1821, is not competent to require security for good behaviour from a prisoner sent in by a darogah under sect. 20, Reg. XX. 1817, or to commence an enquiry into the character of a prisoner made over to him for trial on a specific charge. Should he, in any trial referred to him by the magistrate, conceive it advisable to require security from a prisoner, not convicted of the crime charged, he must report to the magistrate to that effect. Const. No. 548.

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circumstances under which they have been detained, or in cases of an emergent nature are to forward such individuals to the magistrate. Reg. III. 1821, sect. 7, cl. 2.

3612. If a darogah of police, acting under the discretion vested in him by the preceding clause, does not see sufficient cause, after the examination of the persons suspected, to send them to the magistrate, or to detain them until the orders of the magistrate are received, but nevertheless entertains suspicions of their real character and intentions, he is to depute one or more police officers to watch their proceedings in passing through his jurisdiction, and is to notify the same to the adjoining police division in order that the same precautions may be adopted and followed up. Reg. III. 1821, sect. 7, cl. 3.

Darogah how to proceed, if he does not think it necessary to detain them, or to forward them to the magistrate.

3613. If a darogah of police forwards to the magistrate any persons travelling through, or assembling in, his division under suspicious circumstances, the magistrate, having duly enquired into the grounds of their arrest, is either to release them; or to adopt the precautionary measures directed in the preceding clause; or, if they appear to be travelling without any reasonable object, and to be inhabitants of a remote district, or subjects of a foreign state, he is to compel them to return, under a suitable guard, from station to station, to the district or territory from which they appear to have proceeded. Reg. III. 1821, sect. 7, cl. 4.

Magistrate how to proceed, if the darogah forwards such persons to him.

3614. In enforcing the provisions contained in the preceding rules, the darogah and other officers of police, and the village watchmen, are to be careful not to confound strangers coming from the adjacent districts or countries for the evident purpose of cultivating land, or exercising their several professions, with vagrants or other suspected persons. On the contrary, the darogahs are to afford all due and reasonable encouragement to persons coming of their own accord into their respective limits, who are desirous of settling therein from such industrious motives: the police officers are nevertheless to keep a watchful eye over such persons so long as it appears necessary; and the darogahs are invariably to report to the magistrate every instance, that comes to their knowledge, of an accession of this nature to the population of their respective divisions. Reg. XX. 1817, sect. 20, cl. 12.

Darogahs are not to confound with such persons strangers coming for the purpose of cultivating land or exercising their professions;

but such cases are to be reported to the magistrate.

3615. In any cases in which the police officers do not act in accordance with the rules contained in this section, and bodies of suspicious characters may be ascertained to have entered these provinces, or moved about their jurisdictions without their noticing them, they will be liable to severe punishment. C. O. Sup. Pol. L. P. No. 8 of 1845.

Police officers to be punished for neglect of these rules.

SECTION IV.

OF IMMIGRANTS CREATING DISTURBANCES IN THEIR PARENT COUNTRIES.

Government may order removal of immigrants creating disturbances in the countries from which they have emigrated.

3616. Whenever the governor general in council, upon due investigation, is satisfied that the emigrants from any state, (a) who have sought an asylum in the British territories, or the descendants of any such emigrants, have abused the protection afforded to them by attempts to excite disturbances in the state from which they or their ancestors have emigrated, it is competent to the governor general in council to order the removal of those persons to such other part or parts of the country, as is judged most convenient for their future residence. In like manner it is competent to the governor general in council to order such removal, whenever he has grounds to be satisfied that the residence of any body of aliens, or their descendants, in the vicinity of the frontier of the country from which they or their ancestors have emigrated, is likely to cause any serious misunderstanding between that state and the British government. Reg. XI. 1812, sect. 2.

Rules for the disposal of the property of such persons ordered to be removed.

3617. Whenever any body of emigrants, or any individuals belonging to such body, are ordered to be removed from the part of the country, in which they have been established, they are to be allowed to dispose of any property, which they have acquired, in such manner as they judge proper; provided however that, if nevertheless they retain the right to any real property at the period of their actual removal, it is competent to the governor general in council to order such property to be sold by public auction under the superintendence of the collector of the district. In that case the nett proceeds of the sale are to be duly paid to the person or persons to whom the said property belonged. Reg. XI. 1812, sect. 3.

Government may order such persons committing such offences to be confined for such time as is deemed necessary.

3618. In cases in which the governor general in council is satisfied, on due inquiry and mature deliberation, that either the preservation of the tranquillity of the British territories or of the dominions of the allies of the British government, or the maintenance of the relations of amity subsisting between the British government and other states, requires that

(a) The preamble, which sufficiently explains the reasons for the enactment of these provisions, is as follows: "Whereas considerable bodies of persons, being natives of Arracan, and ordinarily denominated Mugs, have from time to time emigrated from that country, and established themselves in that part of the district of Chittagong, which lies contiguous to the Arracan frontier; and whereas numbers of those persons, or of their descendants, abusing the protection which had been afforded to them in the British territories, have excited disturbances and even levied war in the country of Arracan against the government of Ava, of which state Arracan is now a dependency, and have conducted themselves in a manner manifestly tending to disturb the relations of amity, which subsist between the British government and the government of Ava; and whereas it is in consequence necessary that the governor general in council should possess legal powers to remove the said bodies of emigrants and their descendants from the frontier of the territory of Arracan, or any other bodies of aliens or their descendants from the vicinity of the country, from which they may have emigrated, and likewise to detain in confinement any of those persons, or any other individuals being natives of foreign countries or their descendants, for offences of the above nature actually committed by them in the territories of the state from which they may have emigrated; and whereas it is necessary to make provisions for the trial of persons committing or aiding in the commission of the said offences; &c."

any of the leaders or other persons of the above description, who have committed the offences mentioned in sect. 2 of this regulation, should be placed and detained under restraint, it is competent to the governor general in council to order any such persons, having committed any of the said offences, but not otherwise, to be apprehended and committed to confinement at such place and under the custody of such public officer, and detained in confinement for such time, as is deemed by the governor general in council necessary for the public good. Reg. XI. 1812, sect. 4.

3619. Any persons of the above description, or their descendants, who, while living under the protection of the British government, enter the country from which they or their ancestors have emigrated, or any foreign country, and excite or attempt to excite disturbances in the said countries, are liable to be brought to trial for that offence before the sessions court, and if convicted are to be sentenced to suffer imprisonment for the period of 7 years. Reg. XI. 1812, sect. 5, cl. 1.

Such persons committing such offences liable to what penalty.

3620. Any persons, whether native British subjects, or aliens, who furnish emigrants from foreign countries with any assistance, either of men, money, or arms, in prosecution of their attempts to excite disturbances in the country, from which they have emigrated, or in any other country, or otherwise aid such aliens in the prosecution of their criminal design, are liable to be brought to trial for that offence before the sessions court, and if convicted are to be sentenced to suffer imprisonment for the term of 7 years : provided however that, if the session judge, by whom the case is tried, is of opinion that the punishment, established by this and the preceding clause, should in any instance be mitigated, he is to submit the proceedings held on the trial to the nizamat adawlut, who will recommend to the governor general in council such alleviation of the proscribed punishment, as they judge proper : provided moreover that no sentence or order, which is passed on the trial of any persons under the provisions of this regulation, is competent or is to be construed to preclude the governor general in council from the exercise of the power vested in the government by section 4. Reg. XI. 1812, sect. 5, cl. 2.

Persons assisting such parties to commit such offences liable to what penalty.

Such cases to be submitted for mitigation to nizamat adawlut.

Government may in all cases order imprisonment as above.

CHAPTER II.

OF OFFENCES AGAINST THE PUBLIC PEACE.

SECTION I.

OF STATE OFFENCES.

3621. All persons owing allegiance to the British government who, after the passing of this Act, shall rebel, or wage war against the Queen or the government of the East India Company, or shall attempt to wage such war, or shall instigate or abet any such rebellion or the waging of such war, or shall conspire so to rebel or wage war, shall be liable, upon

Rebellion.

Punishment for rebellion, or for waging war against the government.

conviction, to the punishment of death, or to the punishment of transportation for life, or of imprisonment with hard labor for any term not exceeding fourteen years; and shall also forfeit all their property and effects of every description. Act XI. 1857, sect. 1.

Punishment for harbouring or concealing offenders.

3622. All persons who shall knowingly harbour or conceal any person who shall have been guilty of any of the offences mentioned in the preceding section shall be liable to imprisonment, with or without hard labor, for any term not exceeding seven years, and shall also be liable to fine. Act XI. 1857, sect. 2.

Executive government may issue a commission for the trial of persons charged with certain offences in any proclaimed district.

3623. Whenever the executive government of any presidency or place within the said territories shall proclaim, that any district subject to its government is or has been in a state of rebellion, it shall be lawful for such government to issue a commission for the trial of all persons who shall be charged with having committed within such district, after a day to be specified in the commission, any of the crimes mentioned in the preceding sections, or any other crime against the state, or murder, arson, robbery, or other heinous crime against person or property. Act XI. 1857, sect. 3. cl. 1.

Court may be held in any part of the district.

3624. The commissioner or commissioners authorized by any such commission may hold a court in any part of the said district mentioned in the commission, and may there try any person for any of the said crimes committed within any part thereof; it being the intention of this Act, that the district mentioned in the commission shall, for the purpose of trial and punishment of any of the said offences, be deemed one district. Act XI. 1857, sect. 3, cl. 2.

Government may vest certain powers in the court.

3625. It shall be lawful for the executive government, by such commission, to direct that any court held under the commission shall have power, without the attendance or futwa of a law officer, or the assistance of assessors, to pass upon every person convicted before the court of any of the aforesaid crimes any sentence warranted by law for such crime; and that the judgment of such court shall be final and conclusive; and that the said court shall not be subordinate to the sudder court. Act XI. 1857, sect. 4.

Magistrate may commit persons for trial before a court held under this Act.

3626. If a commission be issued under the authority of this Act, any magistrate within the district, which is described in the commission, may commit persons charged with any of the aforesaid crimes within such district for trial before a court to be held under this Act. Act XI. 1857, sect. 5.

Act not to apply to British-born subjects or their children.

3627. Nothing in this Act shall extend to the trial or punishment of any of Her Majesty's natural-born subjects born in Europe, or of the children of such subjects. Act XI. 1857, sect. 6.

Government may issue proclamation prohibiting the carrying or possession of arms in any district.

3628. Whenever the executive government shall deem it necessary for the public safety, it shall be lawful for such government to declare, by proclamation, that from and after a day to be named therein, it shall not be lawful for any person, or for any specified class of persons, to carry or have in their possession any arms or instruments used for warlike purposes, or any specified description of arms or instruments aforesaid, within any district mentioned in the proclamation. Act XI. 1857, sect. 7.

Penalty for unlawful possession of arms, &c.

3629. After the day named in the proclamation, whoever shall carry, or have in his possession, any arms or other such instrument as aforesaid contrary to the proclamation

shall be liable, on conviction before a magistrate, to a fine not exceeding fifty rupees, or to imprisonment for a period not exceeding six months; and the arms or other such instrument as aforesaid shall be confiscated. Act XI. 1857, sect. 8.

3630. It shall be lawful for a magistrate, by warrant, to cause search to be made in any house or other place in which there may be reasonable grounds for suspecting that any arms or other such instrument as aforesaid, kept contrary to the proclamation, may be found; and any such arms or instrument may be seized and confiscated. Act XI. 1857, sect. 9.

Magistrate empowered to search houses, &c. and to seize arms.

3631. Nothing in sections 7, 8, and 9 of this Act shall extend to any person who may be exempted by the authority of the executive government from the prohibition contained in such proclamation. Act XI. 1857, sect. 10.

Government may grant exemption to certain persons.

3632. The word "magistrate" in this Act shall include any person lawfully exercising the powers of a magistrate, and any assistant to a magistrate or deputy magistrate specially authorized by the executive government to exercise the powers vested in a magistrate by this Act. Act XI. 1857, sect. 11.

Interpretation.

3633. Every officer and soldier or other person subject to the articles of war for the native army, who shall be convicted of mutiny, shall forfeit all his property of every description. Act XXV. 1857, sect. 1.

Forfeiture of property.

Forfeiture of property on conviction of mutiny.

3634. If any person who shall have committed treason or any offence for which, by this Act, or Act XI. 1857, or Act XIV. 1857, or Act XVI. 1857, his property is declared to be forfeited, shall have been killed, or shall have died, or shall have escaped out of the territories of the British government, before he shall have been convicted of the offence, or cannot after diligent search be found; any court or other authority which might have tried such offender, if he could have been brought to trial, shall, upon the application of the magistrate or other officer authorized by government to make such application, hold an enquiry, and on proof that the person charged with having committed the offence was guilty thereof, and that he is dead, or has escaped out of the territories of the British government, or cannot after diligent search be found, shall adjudge that all the property of such offender shall be forfeited to government. Act XXV. 1857, sect. 2.

Adjudication of forfeiture in case of death or escape of offender before conviction of an offence for which property is liable to be forfeited.

3635. The forfeiture, whether upon conviction of such an offence as aforesaid or upon an adjudication of forfeiture under this Act, shall extend to all property and effects of or to which the offender shall have been possessed or entitled, either at the time of committing the offence, or at the time of the conviction or of the adjudication of forfeiture, or at any intermediate time; and no sale, alienation, or other disposition of such property, made subsequently to the commission of the offence or made at any time with the fraudulent intention of preventing a forfeiture, shall have any effect against the right of government to the forfeiture. Provided that nothing in this section contained shall affect any transferee of any negotiable security, who shall prove that he acquired the same in good faith and with due caution for valuable consideration. Act XXV. 1857, sect. 3.

Forfeiture to extend to all property possessed by the offender at the time of the commission of the offence;

except negotiable security received in good faith and with due caution.

Forfeiture of land alienated without valuable consideration before the commission of the offence;

unless alienation made and registered three months before.

Court may specify in the conviction the day on which the offence was committed.

What matters shall be proved by the conviction or adjudication.

Procedure for obtaining possession of forfeited property.

Forfeited property or the proceeds to be restored upon proof that escape was not for the purpose of evading justice.

Limitation of suits, &c.

3636. All immoveable property of the offender, which shall be alienated after the passing of this Act and before the commission of any offence specified in section 2, shall be forfeited in the same manner as if no such alienation had been made, unless the alienation be made in good faith and for valuable consideration, or unless the same shall have been made and registered more than three months before the commission of the offence. Act XXV. 1857, sect. 4.

3637. The court, or other authority by which the offender shall be convicted or the forfeiture shall be adjudged, may specify in the conviction or adjudication the day on which the offence was committed, if it can be ascertained. Act XXV. 1857, sect. 5.

3638. In any proceeding concerning property alleged to have been forfeited, the conviction shall be conclusive evidence that the offence was committed, and (if the day be specified in such conviction) that the offence was committed on that day; if the day be not specified, the conviction shall be *primâ facie* evidence that the offence was committed on the day mentioned in the charge. In any such proceeding, an adjudication of forfeiture under this Act shall be *primâ facie* evidence of the commission of the offence, and (if the day be specified in the adjudication) that the offence was committed on that day; if the day be not specified, the adjudication shall be *primâ facie* evidence that the offence was committed on the day mentioned in the charge. Any adjudication under this Act shall be filed with and may be proved in the same manner as the records of the principal court of criminal jurisdiction of the district. Act XXV. 1857, sect. 6.

3639. After the conviction or adjudication, the collector or other chief officer appointed by government for the collection of revenue, or any other officer whom the government may specially appoint, may seize and take possession of the forfeited property: if he require the assistance of a court to enable him to obtain possession of any such property by reason of any dispute respecting the title to the same or for any other cause, the principal civil court of original jurisdiction of the district in which the property is situate may, upon the production of a certified copy of the conviction or adjudication, hear and determine in a summary manner upon petition any matter in dispute relating to such property. Any order which may be passed by the court shall not be subject to appeal; but the party against whom the same may be given, by any court other than one of her majesty's supreme courts of judicature, shall be at liberty to bring a suit to establish his right at any time within one year from the date of the order. Act XXV. 1857, sect. 7.

3640. In case any person whose property shall have been so adjudged to be forfeited shall within one year after the seizure of any part of his property as a forfeiture surrender himself, and shall upon trial before a competent court be acquitted of the offence, his property or the proceeds thereof shall be restored upon proof, to the satisfaction of the court, that he did not escape or keep out of the way for the purpose of evading justice. Act XXV. 1857, sect. 8.

3641. No suit or other proceeding shall be had or taken on account of the seizure of any property seized in pursuance of this Act, or for the restoration or recovery of such

property or of the proceeds thereof, unless the same be instituted within one year from the time of the seizure. Act XXV. 1857, sect. 9.

3642. In case it shall appear to a magistrate that there is reasonable ground to suppose that any person is guilty of any offence specified in section 2 of this Act, and that any property liable to forfeiture for the offence is likely to be made away with, it shall be lawful for the magistrate to attach such property and secure the same until the trial of the offender, or until an enquiry for the purpose of adjudication under this Act shall be had. Act XXV. 1857, sect. 10.

Power to secure property before forfeiture in certain cases.

3643. The word "magistrate" in this Act shall include any officer competent to commit for trial for any offence specified in section 2 of this Act. Act XXV. 1857, sect. 11.

Interpretation.

3644. Every person, who maliciously and advisedly endeavours to seduce any person or persons, serving or engaged to serve in her majesty's military or naval forces in India, from his or their allegiance to her majesty, or duty to the government; or who endeavours to stir up any person or persons belonging to either of the said services to commit any act of mutiny, or to make or endeavour to make any mutinous assembly, or to commit any traitorous or mutinous practice whatsoever, is, on conviction, to suffer transportation for life, or imprisonment with or without hard labor for any term not longer than seven years, as the court may adjudge. Act XIV. 1849, sect. 1.

Exciting mutiny.

Penalty for seducing soldiers or sailors from their allegiance, or exciting them to mutiny.

3645. Any person charged with any offence, punishable under this Act, may be committed by any magistrate within the territories under the British government in India and is to be tried by the court of sessions, or, if the offender be not within the ordinary jurisdiction of the court of sessions, by the supreme court of judicature established by royal charter within the presidency in which he is in custody. Act XIV. 1849, sect. 2.

Persons charged with such offences may be committed by any magistrate.

3646. No court is on the trial of any offence under this Act to require any futwa from any law officer. Act XIV. 1849, sect. 3.

Futwa not required.

3647. This Act is not to exempt any person governed by the articles of war from being tried by a court martial, and punished according to the articles of war; nor any person belonging to the Indian navy from being tried by a court martial, and punished according to the laws for the observance of discipline in the Indian navy; but no person is to be tried for the same offence under the said articles or laws, and also under this Act. Act XIV. 1849, sect. 4.

Such offenders may be tried by court martial if amenable to military law.

3648. It is competent for the ordinary tribunals to try charges of treason, rebellion, or other crime against the state. Act V. 1841, sect. 1.

Tribunals.

May be tried before the ordinary tribunals.

3649. It is competent for the government of any presidency to issue a commission for the trial of any offences of treason, rebellion, or crime against the state by one or more judges, together with such law officers as are required, or without any such officer, according as it is deemed expedient. Act V. 1841, sect. 2.

But government may issue a commission for the trial of such offences.

3650. If government does not see fit to take the case out of the ordinary administration of criminal justice, the ordinary tribunals, established for the trial and punishment of offenders, are to proceed as usual. N. A. R. vol. 2, page 429.

Otherwise, the ordinary courts are to proceed as usual.

Such special courts are to be guided by the same rules as ordinary courts; except that their sentence is to be reported before execution to the mizaimut adawlut; and they are to be guided by special orders of government.

3651. The courts, convened under such commissions, are to try the prisoners brought before them in the same manner as in trials before the ordinary courts; and are to exercise all powers and authorities vested in such courts, except that their sentence, whether of acquittal or punishment, is in every instance to be reported with their proceedings to the highest court [of the Indian government] for criminal matters of the presidency, previous to carrying the same into execution; and they are to be guided as to the place where they are to assemble, the persons to be tried by them, and all other particulars not provided by any Regulation, or by any Act of the governor general in council, by the special orders, which they receive from the executive government, or from the highest court [of the Indian government] for criminal matters in the presidency. Act V. 1841, sect. 3.

Rule in case of the death or absence of any judge or law officers of such courts.

3652. In case of the death, or of the absence from indisposition or other cause, of any of the judges or law officers of the courts, which are appointed to try offenders under this Regulation, the remaining judge or judges, or law officer or officers, are to be competent to form a court, and to proceed with the trial or trials, until provision can be made by government for supplying the place of such judge or judges, or law officer or officers, if any such provision is deemed necessary; or, if no such provision is made, the powers and proceedings of the said courts are not to be affected by the death or absence of such judge or judges, or law officer or officers. Act V. 1841, sect. 4.

Mizaimut adawlut to proceed as usual, but to report their sentence to government.

3653. The highest courts [of the Indian government] for criminal matters of the respective presidencies, on the receipt of any trials referred to them under this Act, are to proceed thereupon according to the rules in force with respect to other trials referred to them; except that they are in every instance to report their sentences to the executive government of the presidency for the time being; and are to wait the orders of government for the period of three calendar months, before they direct their sentence to be carried into execution. Act V. 1841, sect. 5.

Magistrates are to give information of such offences to government; and to be guided by the special orders of government.

3654. Where any person or persons are charged with the crimes mentioned in this Act, the magistrates are to give immediate notice thereof to the government; and are to pay immediate and strict attention to all orders, which are transmitted to them by government for the apprehension of persons charged as aforesaid, or for making any enquiry respecting such persons, or for committing them to take their trials before the ordinary courts, or before the special courts described in this Act. Act V. 1841, sect. 6.

Judges should not proceed with trial, until the orders of government have been ad

3655. A failure to report the case to government, was held insufficient to vitiate the trial, as the Act does not deprive the ordinary courts of their cognizance; but the judge was directed to abstain from trying prisoners in similar cases, until the formality had been complied with. Reports *L. P.* 1856, part 2, page 116.

Jurisdiction of supreme court.

3656. The Act is not to be construed to alter or affect the jurisdiction of any of her majesty's supreme courts of justice. Act V. 1841, sect. 7.

Martial law.

The functions of the ordinary criminal courts may

3657. The governor general in council is empowered to suspend, or to direct any public authority, or officer, to order the suspension of, wholly or partially, the functions of the ordinary criminal courts of judicature within any zillah, district, city, or other place

within any part of the British territories subject to the government of the presidency of Fort William, and to establish martial law therein for any period of time, while the British government in India is engaged in war with any native or other power; as well as during the existence of open rebellion against the authority of the government in any part of the territories aforesaid; and also to direct the immediate trial by courts martial of all persons owing allegiance to the British government, either in consequence of their having been born, or of their being resident, within its territories and under its protection, who are taken in arms in open hostility to the British government, or in the act of opposing by force of arms the authority of the same, or in the actual commission of any overt act of rebellion against the state, or in the act of openly aiding and abetting the enemies of the British government within any part of the said territories. (a) Reg. X. 1804, sect. 2.

be suspended, and martial law established during war, or open rebellion :

in such case persons owing allegiance to British government may be tried by courts martial for overt acts of rebellion, or for assisting the enemy.

3658. Any person born, or residing, under the protection of the British government, within the territories aforesaid, and consequently owing allegiance to the said government, who, in violation of the obligations of such allegiance, is guilty of any of the crimes specified in the preceding section, and who is convicted thereof by the sentence of a court martial during the suspension of the functions of the ordinary criminal courts of judicature, and the establishment of martial law, is liable to the immediate punishment of death, and is to suffer the same accordingly by being hung by the neck till he is dead. All persons who, in such cases, are adjudged by a court martial to be guilty of any of the crimes specified in this regulation, are also to forfeit to the British government all property and effects, real and personal, which they possessed within its territories at the time when the crime, of which they are convicted, was committed. Reg. X. 1804, sect. 3.

Such persons found guilty of such offences to be punished with death,

and confiscation of all property and effects.

3659. The governor general in council is not precluded by this regulation from causing persons charged with any of the offences, described in the present regulation, to be brought to trial at any time before the ordinary courts of judicature, or before any special court appointed for the trial of such offences, under Act V. 1841(b), instead of causing such persons

But these provisions do not preclude the trial of such offences by the ordinary or the special courts described above, by order of government.

(a) The preamble of this regulation is:—"Whereas during wars, in which the British government has been engaged against certain of the native powers of India, certain persons, owing allegiance to the British government, have borne arms in open hostility to the authority of the same, and have abetted and aided the enemy, and have committed acts of violence or outrage against the lives and properties of the subjects of the said government; and whereas it may be expedient that, during the existence of any war in which the British government in India may be engaged with any power whatever, as well as during the existence of open rebellion against the authority of the government, in any part of the British territories subject to the government of the presidency of Fort William, the governor general in council should declare and establish martial law within any part of the territories aforesaid for the safety of the British possessions, and for the security of the lives and property of the inhabitants thereof, by the immediate punishment of persons owing allegiance to the British government, who may be taken in arms in open hostility to the said government, or in the actual commission of any overt act of rebellion against the authority of the same, or in the act of openly aiding and abetting the enemies of the British government within any part of the territories above specified;" &c.

(b) The original mentions Reg. IV. 1799 and (*Ced. Prov.*) Reg. XX. 1803; but Act V. 1841 has entirely superseded those regulations, their provisions being re-enacted in it with some modifications.

to be tried by courts martial, in any cases, in which the latter mode of trial does not appear to be indispensably necessary. Reg. X. 1804, sect. 4.

Rules for the guidance of a magistrate, in whose district martial law is proclaimed.

Persons, apprehended by military officer when not in the actual commission of overt acts of rebellion, are to be delivered over to the civil power.

Magistrate is to attach all property belonging to such persons, placing the landed estates under the management of the collector.

Military officers attaching property are to make it over to the magistrate.

3660. Whenever martial law is proclaimed in the district under his authority, the magistrate is to direct all officers in command of troops, which are employed within his jurisdiction, to act under the proclamation until it is recalled; leaving it to the discretion of such officers to confine the operation of the proclamation to the principal person, or persons, concerned in any of the acts of rebellion described above, or to extend it to their principal adherents and followers, as the exigency of the case may require. If any person, charged with any of the overt acts of rebellion specified in Reg. X. 1804, is apprehended by any military officer, when not in the actual commission of offences of that description, he is to be delivered over by the military to the civil power; and the magistrate is to commit him to close custody, and to adopt the necessary measures for bringing him to trial on a charge of high treason.(a) The magistrate is to attach all property, whether real or personal, which is situated within his jurisdiction, belonging to any person or persons, who are guilty of overt acts of rebellion against the authority of government; and to continue such property under attachment until the pleasure of government on the occasion is known. Whenever he attaches landed estates in virtue of this order, he is to place the same under the management of the collector of the district, with instructions to adopt the proper measures for realizing the revenues of such estates. Should the property of the rebels be situated in any other district, he is to make the necessary communication to the magistrate of such district, requiring him at the same time to attach the property in question, and to continue the same under attachment until he is furnished with the orders of government for his further guidance in the disposal of the property. If any property of persons, charged with acts of rebellion against the state, is attached by any military officers, it is to be delivered over to the magistrate, whether the owners have been taken in arms or otherwise, and to be retained under attachment pending the orders of government. The commander-in-chief was required to make these rules known to all military officers, and to enjoin a strict adherence to them in all cases to which they are applicable. Govt. Order, April 11, 1805.(b)

(a) In English law high treason comprises, besides offences more immediately against the person of the Queen,—the levying war against the Queen by assembling with a number of persons (three or four is sufficient) armed and arrayed in a warlike manner with the intent to endeavour by force and arms to subvert the constitution and government of the realm; to force the Queen to put away her ministers, or any councillor, or other magistrate; to hold or defend any of the Queen's castles, &c., against the Queen or her forces, or to deliver them to rebels by treachery; to effect innovations of a public and general nature; or to obtain the repeal of a statute, or the redress of any public grievance, real or pretended:—the adhering to the Queen's enemies, by giving any assistance to such enemies unless on a well grounded apprehension of immediate death in case of refusal; by joining such enemies in acts of hostility against the realm, or even against the Queen's allies, although no acts of hostility are committed; or by sending money, arms, intelligence, or the like, to the Queen's enemies, although such money, intelligence, &c., be intercepted and never reach them:—and the conspiring to incite foreigners to invade the realm. In all these cases some overt act must be proved. *Blackstone, Comyns, and Archbold.*

(b) Harrington's Analysis, vol 1, page 350.

3661. It was held that the magistrate ought to have proceeded as for resistance of process against certain parties assembling to resist by force and arms the authority of the police officers. But the criminality of the resistance was not affected by the illegality of the police officers' proceedings. N. A. R. vol. 2, page 225.

Resisting the police does not amount to rebellion.

3662. Teepoo Paugul, the head of a religious sect, dissuaded the ryots from paying rent to the zumeendars, and from working on the military road then in course of formation by order of government; and collected rents and exacted contributions from the people on the faith of his sacred character, and under the pretence that he would soon become badshah, or king of the country. He also established a place called the regal court, and collected arms therein. The consequences of this conduct were various disturbances, in which the officers of government were resisted, and several police officers and other people murdered; but it did not appear that he was personally concerned in any of these outrages. The nizamat adawlut held that the whole of his conduct was too ridiculous and paltry to admit of its being considered high treason against the state; and he was accordingly convicted of seditious practices, and disturbing the peace, and sentenced to imprisonment for 5 years with labor. N. A. R. vol. 2, page 429.

Precedents.

Seditious practices and disturbing the peace.

3663. Teetoo Meer, having acquired a reputation for sanctity, collected about him a numerous body of followers, engaged in serious acts of outrage and rebellion, committed various murders and other enormities, and opposed by force of arms the joint magistrate of Baraset, who went out to quell the disturbance, killing several of the sepoys and others of his guard. He was killed by the military force, sent out against them; but 184 of his followers were put upon their trial, charged with rebellion, attended with murder and wounding, and attacking the joint magistrate. The only justification attempted was that certain complaints preferred by them in the joint magistrate's court had been dismissed. The court convicted one of having headed the insurgent force, he having been conspicuously and actively engaged in the attack and massacre of the joint magistrate's party, and sentenced him capitally;—13 convicted of the principal charge were sentenced, 11 to imprisonment for life, and 2 in consequence of their youth (aged 18 and 20) for 7 years;—109 convicted of the minor part of the charge were sentenced, 18 ringleaders to imprisonment for 5 years, 40 for 4 years, 38 for 3 years, 10 for 2 years (9 in consideration of wounds, and 1, the son of Teetoo Meer, with reference to his youth and the evil influence and untimely loss of his father), and 3 discharged without punishment in consequence of loss of limbs from wounds;—57 were acquitted and released, 3 died before trial, and one was found to be insane. N. A. R. vol. 4, page 198.

Rebellion attended with various murders and other enormities, and attacking the magistrate.

3664. In a trial for rebellion in the Tenasserim provinces, in which one life was lost and the officers of government were resisted with arms, the court, at the recommendation of the commissioner (who, although he had recorded a sentence of death against him, proposed a mitigation of the punishment) sentenced the ringleader to imprisonment for life in the local jail, as a better warning to others than transportation beyond seas; 2 to imprisonment for 14 years; 4 for 10 years; 10 for 5 years; and 2 for 2 years; all with labor in irons. N. A. R. vol. 6, page 36.

Rebellion attended with the loss of one life, and resistance to the officers of government.

Rebellion not attended with murder, but involving acts of oppression and extortion.

3665. In a case of rebellion in Cuttack, which, although not attended with murder and speedily put down, yet occasioned severe calamities to numerous families, and was not the first nor second instance of this crime in the district, the nizamat adawlut sentenced 4 persons to transportation for life, 2 as ringleaders, one as having been only lately released from jail after an imprisonment of fourteen years for being concerned in a former rebellion, and one as being at the time he was engaged in the rebellion a thana burkundaz; 21 persons to imprisonment for 5 years with labor and irons; 24 to imprisonment for four years without irons, and a fine of 25 rupees each in lieu of labor; and 15 to imprisonment without irons for three years, and a fine of 20 rupees each in lieu of labor:—7 died, and the remainder were acquitted. N. A. R. vol. 5, page 46.

Mahomedan law.

Four descriptions of rebels.

Who is the rightful imâm.

Rebellion is to be put down by fair means, if possible.

Opinion of Shafei that force cannot be applied to rebels, until they have committed acts of hostility; and that rebels flying from battle are not to be pursued.

3666. The Mahomedan law recognizes four descriptions of rebels, or persons who resist the authority of the rightful imâm: of these the first two are no better than, and are considered as, highway robbers, the only difference being that one acts upon some pretext of justification; the third are insurgents (*kharijee*) who assemble in a large body, and, possessing the means of resistance, withdraw from their obedience to the imâm on the plea that his title to the office is invalid, and that therefore it is justifiable to make war upon him: and the fourth are *baghat*, those who simply withdraw themselves from obedience to the rightful imâm. The two last classes only are subject to the peculiar provisions of the law which relate to rebellion. It seems doubtful how far the British government in India can be considered by lawyers as the rightful imâm; but this much has been conceded by the law officers, that the territory of the British government may be accounted “dar-ool-islam,” and the provisions for *baghawat*, or rebellion, consequently held applicable upon trials for treason and insurrection against the established government. (a)—On the occurrence of a rebellion, it is incumbent on the imâm to endeavour, in the first instance, to remove the cause of dissatisfaction, and to recall the rebels to their allegiance by fair means; but he is not at the same time to neglect more forcible measures, such as may be sufficient to quell the insurrection at once. “Shafei maintains that it is not lawful to make war upon rebels, until they commit acts of hostility, because it is not lawful to kill Mussulmans but for the purpose of repulsion, and rebels are Mussulmans; contrary to the case of infidels, the commencing war with whom is lawful, as their infidelity legalizes the putting them to death.” He also says that “in neither case (whether they have a force in reserve or not) are their wounded to be slain, or those of them who fly from battle pursued, because the slaying of them is not lawful but for the purpose of repulsion; and upon a rebel being disabled, or flying from battle, the slaying of him is no longer for the purpose of repulsion, and consequently is

(a) Mr. Harington says—“they have indeed rather erred in straining the application of these provisions to cases for which they were not intended; and as they do not authorize more than imprisonment, except during actual resistance, or for the purpose of quelling an open rebellion (when prisoners and fugitives may be put to death, if it appear necessary), the convicts have been declared liable to less punishments, under the special rules of *tazeer* for *baghawat*, than might have been inflicted, at the discretion of the ruling power and its judiciary delegates, on the general principles of *seasut*.” *Analysis*, vol. 1, page 295.

illegal.”(a) But this doctrine is opposed by Aboo Haneefa and his disciples, who hold it lawful to judge of the intent of such persons by their overt acts, such as the assembling of an armed force. It seems however to be agreed that rebels should be immediately seized, and imprisoned until they repent, “in order that their wickedness may be (as far as possible) repelled.” The property of rebels is not liable to confiscation, but is to be held in trust by the imâm until they repent, in which case it is to be restored to them. No punishment attaches to the murder of one rebel by another while in a state of rebellion; because, it is said, “the authority of the rightful imâm did not extend over him at the time of the murder.” The sale of arms and ammunition to rebels, knowing them to be such, is an offence: but the rule does not apply to the materials used in the construction of such arms.(b)

Property of rebels to be held inviolate.

During rebellion one rebel may murder another.

Arms may not be sold to rebels.

(a) It was on the ground of these opinions of Shafêi that the law officers declared the defendants, in the case cited in para. 3663, not liable to any legal penalty. But the futwas were justly disregarded by the nizamat adawlut, not only because they were contrary to the principles of natural justice, but also because the opinion of Shafêi carries no weight when opposed to the doctrine of Aboo Haneefa and his two disciples, “whose authority is paramount and exclusively governs judicial decisions in Bengal and Hindostan, as well as at Constantinople, and other seats of Mahomedan dominion in Turkey and Tartary.” Mr. Harington also observes that the doctrines of Shafêi have a limited prevalence only on the sea-coast of the Peninsula, and among the Malays.

(b) Hedaya, book 9, chap. 10. The above provisions, as Mr. Harington observes, look upon rebellion as a religious rather than a civil offence; and aim at prevention or suppression of the actual insurrection only, without providing by exemplary punishment against the recurrence of similar attempts. The necessity of a new law for the definition and punishment of crimes against the state was suggested to government in 1801 by the futwas of the law officers upon the trials, held in the preceding year, of the Nawab Shums-ood-doulah, and Meerza Jan Tupish: who were tried for being concerned in Wuzer Ali's conspiracy against government, and as accomplices in the murder of Mr. Cherry and other persons at Benares in January 1799. Shums-ood-doulah was convicted “of attempts to enter into league with the sovereigns of other countries for the purpose of subverting the British government in Bengal; of endeavouring to connect himself with the zumeendars of Behar with the design of exciting an internal commotion; and of keeping up a treasonable correspondence.” Meerza Jan Tupish was convicted of the charge of treason preferred against him “in being joined in the counsels of Shums-ood-doulah; in instigating the sending petitions and letters to Sultan Zuman Shah and his ministers of state; and in representing as a great advantage to Shums-ood-doulah the collusion of the zumeendars of soobah Azeemabad on the strength of a mokhtarnamah from them, which was a mere forgery, and without foundation.” Yet in both cases the prisoners were declared by the futwas of the law officers of the special court who tried them, and of the nizamat adawlut, liable only to “imprisonment, until they should show signs of repentance to the satisfaction of the ruling power;” and the sentence accordingly passed upon each of them by the nizamat adawlut was “to be imprisoned, until the governor general in council shall be satisfied with the sincerity of their repentance.” Upon the exposition of the Mahomedan law which governed this sentence, the governor general in council (in a letter to the nizamat adawlut, dated July 9, 1801) observed, that “the principle, on which this interpretation of the law is founded, appears to be, that the invasion of foreign powers, whom the criminals had solicited to attack the British possessions, and the plans of the same criminals for exciting internal insurrection in those possessions, had not been actually carried into effect. Under the native administration, this defect in the law would probably have been supplied by the exercise of that arbitrary power uniformly assumed in such cases by the Mahomedan government. But as the British government has wisely and honorably precluded itself from the exercise of such power, and has bound itself to administer justice according to the Mahomedan law, until that law shall be expressly altered, it is evident that the British power in India must be continually exposed to the most serious danger, unless this obvious defect of the Mahomedan law, with regard to the punishment of crimes committed against the state, be corrected.” The nizamat adawlut were directed, in

SECTION II.

OF DESERTION.

**Land Forces.
European
troops.**

Persons confessing before magistrates that they are deserters, are to be deemed to have enlisted.

3667. Every person who shall voluntarily deliver himself up and confess himself to be a deserter from her majesty's Indian forces; or who, while serving in any of the said forces, shall, to any officer or non-commissioned officer thereof, confess himself to be a deserter as aforesaid; or who, upon being apprehended for any offence, shall, in the presence of the magistrate or of the commanding officer of the place, confess himself to be a deserter as aforesaid; shall be deemed to have been duly enlisted and to be a soldier, and shall be liable to serve in any such corps of the said forces as the officer commanding in chief at any of the said presidencies shall appoint, whether such person shall have been actually enlisted as a soldier or not; and he shall be liable to punishment in the same manner as if he had actually enlisted and had afterwards deserted. 12 and 13 Vict. cap. 43, sect. 46.

Punishment for inducing or assisting in desertion.

3668. Any person who shall, by words or by any other means whatsoever, directly or indirectly procure any soldier to desert, or shall, by words or by any other means whatsoever, attempt to procure or persuade any soldier to desert; and any person who, knowing that any soldier is about to desert, shall aid or assist him in deserting; or, knowing any soldier to be a deserter, shall conceal such deserter, or aid or assist such deserter in concealing himself, shall be deemed guilty of a misdemeanor, and shall on conviction thereof be liable to be punished by fine or imprisonment, or both, as the court before which such conviction shall take place may adjudge. 12 and 13 Vict. cap. 43, sect. 47. *See paras. 3546 et seq.*

Penalty on master in certain cases if a deserter be concealed on board his ship.

3669. If it shall appear that any officer or soldier, being a deserter from the land forces in the service of her majesty in India has been concealed on board any merchant vessel, and that the master or person in charge of such vessel for the time being, though ignorant of the fact of such concealment, might have known of the same but for some neglect of his duty as such master or person, or for the want of proper discipline on board his vessel, such master or person shall be liable to a fine not exceeding five hundred rupees. Provided always, that no conviction for such offence, as is hereinbefore described, shall be lawful, unless the same shall be stated in the charge which the party is called upon to answer; and in such charge it shall be lawful to state in the alternative that the party has either knowingly harboured or concealed a deserter on board his vessel, or has, by

Proviso.

may be in the alternative.

consequence, to frame the draft of a regulation conforming to the principles of English law with regard to the crime of treason, as far as local circumstances might admit, both in the definition of the crime, and in the punishment of persons convicted of it. This regulation though drafted was never passed; it being considered sufficient to enact Reg. X. 1804, the provisions of which have been cited in the text. In the case noted above, Meerza Beg and others, convicted of having accompanied Wuzer Ali in arms to Mr. Cherry's house, were declared liable to "tazeer at the discretion of the ruler of the country;" and Meerza Beg, who appeared to have taken an active part in the massacre, was sentenced by the nizamat adawlut, on the 5th August, 1799, to suffer death. *Harington's Analysis*, vol. 1, page 294.

neglect of duty or by reason of the want of proper discipline on board the vessel, allowed such deserter to be so concealed. Act XI. 1856, sect. 1.

3670. Any person, whether a European British subject or not, who shall be guilty of an offence punishable under this Act, shall be punishable for the same by any justice of the peace for the presidency towns of Calcutta, Madras, and Bombay, or for any of the settlements of Prince of Wales' Island, Singapore, and Malacca, magistrate, joint magistrate, or person lawfully exercising the powers of a magistrate in any port within the territories of the British government within whose jurisdiction the offence may have been committed, or such person may have been apprehended or found, whether the offence shall have been committed within the local limits of the jurisdiction of such officer or not; and any person hereby made punishable by a justice of the peace shall be punishable on summary conviction. Act XI. 1856, sect. 2.

Jurisdiction.

3671. No conviction, order, or judgment of any justice of the peace shall be quashed for error of form or procedure, but only on the merits; and it shall not be necessary to state on the face of the conviction, order, or judgment, the evidence on which it proceeds; but the depositions taken, or a copy of them, shall be returned with the conviction, order, or judgment, in obedience to any writ of *certiorari*; and if no jurisdiction appears on the face of the conviction, order, or judgment, but the depositions taken supply that defect, the conviction, order, or judgment, shall be aided by what so appears in such depositions. Act XI. 1856, sect. 3.

Conviction to be quashed on merits only - form of conviction, &c.

3672. Nothing in this Act contained shall prevent any justice of the peace, magistrate, or other officer having authority in that behalf, from committing for trial any person who shall be charged with an offence punishable under Act XIV. 1849,* or any other Act hereafter to be in force, notwithstanding that such offence may be also punishable under this Act. Provided that no proceedings shall have been had against such person in respect of the same offence under this Act. Act XI. 1856, sect. 4.

Saving of proceedings under Act XIV. 1849.

* See para. 3644.

Proviso.

3673. Whenever, on information given on oath or solemn affirmation, where by law a solemn affirmation may be used instead of an oath, to the commanding officer of any fort, garrison, station, regiment, or detachment, at any port or place within the territories of the British government, in which no person lawfully exercising magisterial powers can be found, which oath or affirmation the several persons above named shall severally under this Act have power to administer; or whenever, on such information as aforesaid given to any justice of the peace, magistrate, joint magistrate, or person lawfully exercising the powers of a magistrate, having jurisdiction within such port or place, there shall appear reason to suspect that any European officer or soldier belonging to the said forces, who may have deserted or be absent without leave, is on board any ship, vessel, or boat, or is concealed on shore at any such port or place within the territories of the British government, it shall be lawful for such commanding officer or justice of the peace, magistrate, joint magistrate, or person lawfully exercising the powers of a magistrate as aforesaid, to issue a warrant authorizing the person or persons to whom such warrant may be addressed, to

Commanding officer may issue warrants for apprehension of deserters.

enter into and search, at any time of the day or night, any such ship, vessel, or boat, or any house or place on shore, and to apprehend any such officer or soldier, and to detain him in custody in order to his being dealt with according to law. Act XI. 1856, sect. 5.

Warrant to whom to be addressed and by whom to be executed.

3674. The warrant to be issued under the preceding section may be addressed to any European officer or soldier of the said forces, or to all constables, peace officers, and other persons who may be bound to execute the warrant of any justice of the peace, magistrate, joint magistrate, or person lawfully exercising the powers of a magistrate, and acting in the execution of this Act; and all such persons shall be bound to execute, perform, and obey such warrant. Act XI. 1856, sect. 6.

Persons apprehended how to be dealt with, &c.

3675. Every person who shall be apprehended under any warrant under section 5 of this Act, shall be brought without delay before a justice of the peace, magistrate, joint magistrate, or person lawfully exercising the powers of a magistrate, in or near the place wherein such person shall have been arrested; who shall examine such person, and, if he shall be satisfied either by the confession of such person or the testimony of one or more witness or witnesses, or by his own knowledge, that such person is a deserter from the said forces, shall cause him to be delivered, together with any depositions and papers relative to the case, to the commanding officer of the regiment, corps, or detachment to which he shall belong, if the same shall be in or near the place of such arrest, or, if otherwise, then to the commanding officer of the nearest military station, in order that he may be dealt with according to law. Act XI. 1856, sect. 7.

Indian navy.

Penalty for instigating desertion from the Indian navy or concealing deserter.

3676. Whoever, directly or indirectly, instigates or procures any officer, seaman, or other person belonging to the Indian navy to desert, or knowing that any officer, seaman, or other person belonging to the Indian navy is about to desert, assists him in deserting; or, knowing any officer, seaman, or other person belonging to the Indian navy to be a deserter, harbours, conceals, or assists in concealing such deserter, shall, for every such offence, be liable to a fine not exceeding one thousand rupees. Act III. 1855, sect. 2.

Penalty on master in certain cases, if a deserter be concealed on board his ship.

3677. If it shall appear that a deserter has been concealed on board any merchant vessel, and that the master or person in charge of such vessel for the time being, though ignorant of the fact of such concealment, might have known of the same but for some neglect of his duty as such master or person, or for the want of proper discipline on board his vessel, such master or person shall be liable to a fine not exceeding five hundred rupees. Provided always, that no conviction for such minor offence as is lastly hereinbefore described, shall be lawful unless the same shall be stated in the charge which the party is called upon to answer; and in such charge it shall be lawful to state in the alternative that the party has either knowingly harboured or concealed a deserter on board his vessel, or has, by neglect of duty, or by reason of the want of proper discipline on board the vessel, allowed such deserter to be so concealed. Act III. 1855, sect. 3.

Charge may be in the alternative.

Jurisdiction.

3678. Any person, whether a European British subject or not, who shall be guilty of an offence punishable under this Act, shall be punishable for the same by any justice of the

peace for any of the presidency towns of Calcutta, Madras, and Bombay, or for any of the settlements of Prince of Wales' Island, Singapore, and Malacca, magistrate, joint magistrate, or person lawfully exercising the powers of a magistrate in any port within the territories of the British government in India, within whose jurisdiction the offence may have been committed, or such person may have been apprehended or found, whether the offence shall have been committed within the local limits of the jurisdiction of such officer or not; and any person hereby made punishable by a justice of the peace, shall be punishable on summary conviction. Act III. 1855, sect. 4.

3679. No conviction, order, or judgment of any justice of the peace shall be quashed for error of form or procedure, but only on the merits; and it shall not be necessary to state on the face of the conviction, order, or judgment, the evidence on which it proceeds; but the depositions taken, or a copy of them, shall be returned with the conviction, order, or judgment, in obedience to any writ of *certiorari*; and, if no jurisdiction appears on the face of the conviction, order, or judgment, but the depositions taken supply that defect, the conviction, order, or judgment shall be aided by what so appears in such depositions. Act III. 1855 sect. 5.

Conviction to be quashed on merits only
Form of conviction, &c

3680. Nothing in this Act contained shall prevent any justice of the peace, magistrate, or other officer having authority in that behalf, from committing for trial any person who shall be charged with an offence punishable under Act XIV. 1849,* or any other Act hereafter to be in force, notwithstanding that such offence may be also punishable under this Act: provided that no proceedings shall have been had against such person in respect of the same offence under this Act. Act III. 1855, sect. 6.

Saving of proceedings under Act XIV. 1849.

* See para 3644.

3681. Whenever, on information given on oath or solemn affirmation, where by law a solemn affirmation may be used instead of an oath, to the commander-in-chief of the Indian navy, or other person who shall be in the performance of the duties of superintendent of the Indian navy, or his deputy, or, in their absence, to the senior officer of the Indian navy at any port or place within the territories of the British government in India, which oath or affirmation the several persons above-named shall severally under this Act have power to administer or whenever, on such information as aforesaid, given to any justice of the peace, magistrate, joint magistrate, or person lawfully exercising the powers of a magistrate, having jurisdiction within such port or place, there shall appear reason to suspect that any officer, seaman, or other person belonging to the Indian navy, who may have deserted or be absent without leave, is on board any ship, vessel, or boat, or is concealed on shore at any such port or place within the territories of the British government in India; it shall be lawful for such commander-in-chief of the Indian navy, or person performing the duties of superintendent of the Indian navy, or his deputy, or such senior officer, or justice of the peace, magistrate, joint magistrate, or person lawfully exercising the powers of a magistrate, as aforesaid, to issue a warrant authorizing the person or persons to whom such warrant may be addressed to enter into and search, at any time of the day or night, any such ship, vessel, or boat, or any house or place on shore, and to apprehend any such officer, seaman, or person belonging to the

Commander-in-chief of Indian navy, &c., may issue warrants for apprehension of deserters.

Indian navy, and to detain him in custody in order to his being dealt with according to law. Act III. 1855, sect. 7.

Warrant to whom
to be addressed,
and by whom to be
executed.

3682. The warrant to be issued under the preceding section may be addressed to any persons in the Indian navy, or to all constables, peace officers, and other persons who may be bound to execute the warrant of any justice of the peace, magistrate, joint magistrate, or person lawfully exercising the powers of a magistrate, and acting in the execution of this Act; and all such persons shall be bound to execute, perform, and obey such warrant. Act III. 1855, sect. 8.

Persons appre-
hended how to be
dealt with, &c

3683. Every person, who shall be apprehended as a deserter from the Indian navy under any warrant under section 7 of this Act, shall be brought without delay before a justice of the peace, magistrate, joint magistrate, or person lawfully exercising the powers of a magistrate, in or near the place wherein such person shall have been arrested, who shall examine such person, and, if he shall be satisfied, either by the confession of such person or the testimony of one or more witness or witnesses, or by his own knowledge, that such person is a deserter from the Indian navy, shall cause him to be placed on board some vessel of the Indian navy, in order that he may be dealt with according to law; and, if there shall be no such vessel in or near the place wherein such deserter shall have been apprehended, shall cause such deserter to be conveyed to the nearest or most convenient prison, and to be detained there until he can be placed on board a vessel of the Indian navy for such purpose as aforesaid: and, in every case in which any person shall be committed to prison as aforesaid, the committing magistrate shall transmit an account thereof to the commander-in-chief of the Indian navy or to the officer commanding some vessel of the Indian navy; and every person so committed to prison shall be entitled to his discharge from custody under such commitment, unless within three months from the date thereof he shall, on the requisition of the said commander-in-chief, or such other officer as aforesaid, have been placed on board one of the vessels of the Indian navy in order that he may be dealt with according to law. Act III. 1855, sect. 9.

SECTION IIA.

OF ARMS AND AMMUNITION.

In places to
which this section
is extended, writ-
ten notice of the
possession of arms,
shall be given to
the magistrate.

3684. In any district or place to which the provisions of this section shall be extended by order of the governor general of India in council or of the executive government of any presidency or place, every person shall, within such time as shall be mentioned in the order, or, if no time be mentioned therein, within one week from the publication of the order in the district or place, give notice in writing to the magistrate, or other officer specified by the executive government, of any fire-arms, bayonet, sword, spear, spear-head, or other deadly weapon to be specified in such order, which shall be in his possession or shall be on his premises in the possession of any of his retainers or servants; and shall also give immediate

notice in writing of all other arms of the like description, which shall at any subsequent time come into his possession or into the possession of any of his retainers or servants as aforesaid. The notice shall specify the number and description of the arms so possessed, and also, in the case of arms so possessed by retainers or servants, the names of such retainers or servants and in what capacities they are respectively employed. Act XXVIII. 1857, sect. 1.

What to be specified in the notice

3685. Whoever wilfully neglects to give such notice as aforesaid shall be liable, on conviction before a magistrate, to a penalty not exceeding five hundred rupees; and all arms in the possession of such person may be seized and shall be confiscated if the convicting magistrate shall so adjudge: and in case the arms of which he shall so neglect to give notice shall exceed what may be considered reasonable for the private use of such person, he shall be liable to imprisonment with or without hard labor for a term not exceeding two years, and shall also be liable to a fine not exceeding five thousand rupees; and all the arms and any ammunition or military stores in the possession of such person or on his premises shall be confiscated. Act XXVIII. 1857, sect. 2.

Penalty for wilful neglect to give notice.

3686. The magistrate shall cause to be prepared from such notices a register of the names of persons having arms in their possession, and the number and description of such arms; and shall also, at the request of any person giving such notice as aforesaid, deliver to him a certificate specifying the date of the notice and the number and description of arms specified therein. Act XXVIII. 1857, sect. 3.

Register to be prepared, and certificate to be granted on request.

3687. If, in the judgment of the government or of the magistrate, any such arms as aforesaid or any ammunition in the possession of any person cannot be left in such possession without danger to the public peace, it shall be lawful for the magistrate to cause such arms or ammunition to be seized and detained in safe custody for such time as may be deemed necessary. Act XXVIII. 1857, sect. 4.

Seizure and detention of arms and ammunition by the magistrate.

3688. In any district or place to which the provisions of this section shall be extended by order of the governor general of India in council or of the executive government of any presidency or place, if any person goes armed with any such arms as aforesaid, and shall not produce a certificate from a magistrate, or other officer authorized by government to grant licenses to go armed, that he has obtained such a license or that he is exempted by government from the foregoing provisions, or give reasonable proof of his being otherwise exempted from the said provisions, he shall be liable to be disarmed by any magistrate, deputy magistrate, or assistant to a magistrate, or by any European commissioned officer in the service of her majesty, or by any member of a volunteer corps enrolled by authority of government whilst on duty, or by any police officer, if, in the judgment of such magistrate or other person as aforesaid, it is dangerous to the public peace to allow such person to go armed. Provided always that if any person shall have a license from the magistrate of the district or place, at which he resides or may be, to carry on a journey such arms as the magistrate may consider reasonable for his private use, and shall obtain from such magistrate a certificate stating the name and address of the licensee, the route by which he intends to proceed, the time which such journey is

In places to which this section is extended, persons going armed may be disarmed in certain cases.

What officers &c. authorized to disarm.

License to travellers to carry arms.

expected to occupy, and the arms which he is permitted to carry, such certificate shall have the same force and effect according to its tenor in every district or place specified therein as if leave to go armed had been granted by the magistrate of such district or place. Act XXVIII. 1857, sect. 5.

Exemptions;
officers, soldiers,
and sailors;

volunteers;

police and reve-
nue officers;

other persons.

Armament of
ships exempt.

3689. The foregoing provisions shall not apply to—1. Officers, soldiers, and sailors, in the military or naval service of her majesty in respect of arms and ammunition kept by them for use in the public service. 2. Members of volunteer corps in respect of such arms and ammunition. 3. Police and revenue officers and other persons in respect of arms and ammunition furnished by government for use in the public service, or provided by themselves with the sanction of government for such use. 4. Such other persons as the government may think fit to exempt from such provisions. — Arms and ammunition belonging to any ship or vessel, not exceeding the reasonable armament thereof, shall also be exempt from such provisions. Act XXVIII. 1857, sect. 6.

Penalty for ma-
nufacturing or deal-
ing in arms or am-
munition without
license, or contrary
to the conditions
therein contained.

3690. If any person shall manufacture, repair, sell, or keep or expose for sale, any arms of the description hereinbefore mentioned, or shall manufacture, or sell, or keep or expose for sale, percussion-caps, gunpowder, or other ammunition, without a license to manufacture or deal in arms or ammunition, as the case may be, or contrary to any of the conditions contained in any such license, he shall be liable, on conviction before a magistrate, to a penalty not exceeding five hundred rupees, in addition to double the value of any arms or ammunition sold; and all arms and ammunition belonging to the offender shall be forfeited if the convicting magistrate shall so adjudge. Act XXVIII. 1857, sect. 7.

Licenses by whom
to be granted.

3691. Licenses to manufacture or deal in percussion-caps shall be granted by the governor general in council, or by the executive government, or by an officer specially authorized by the governor general in council or by the executive government to grant such licenses. Licenses to manufacture or deal in arms and ammunition other than percussion caps may be granted by a magistrate or by an officer authorized by the governor general in council or by the executive government to grant such licenses. Act XXVIII. 1857, sect. 8.

Licensed manu-
facturers or dealers
to enter in a book
an account of stock-
in-trade, names of
purchasers &c.

Inspection of
book.

3692. Every person licensed to manufacture or deal in arms, percussion-caps, or other ammunition, shall enter, in a book to be kept by him for that purpose, an account of all the stock-in-trade which he may from time to time have in his possession or under his control, and also the name and address of every purchaser of arms or ammunition sold by him, together with the nature, description, and quantity of such arms or ammunition. Such book shall be open at all times to inspection by the magistrate or other duly authorized officer, by whom copies may be taken of all entries therein contained. If any such person shall omit or fail duly to keep such a book or to make therein all such entries as are hereby required, or if any person shall prevent or obstruct the inspection of such book or shall make a false entry therein, he shall be liable for every such offence, on conviction before a magistrate, to a penalty not exceeding five hundred rupees, in addition to double the value of any arms or ammunition sold of which he shall fail to make such entry or

respecting which he shall make a false entry; and if the offender be licensed to manufacture or deal in arms or ammunition, he shall also forfeit his license if the convicting magistrate shall so adjudge. Act XXVIII. 1857, sect. 9.

3693. The magistrate or other officer authorized by government may at any time enter the premises in which arms or ammunition shall be manufactured or kept by any licensed manufacturer or dealer in arms or ammunition, in order to inspect the stock-in-trade of such manufacturer or dealer; and if any such manufacturer or dealer shall intentionally conceal from such magistrate or other officer as aforesaid any part of his stock-in-trade, or shall wilfully refuse to point out where the same is kept, he shall be liable, on conviction before a magistrate, to a penalty not exceeding five hundred rupees; and all the stock-in-trade belonging to such person may be seized and shall be confiscated if the convicting magistrate shall so adjudge. Act XXVIII. 1857, sect. 10.

Magistrate or other officer may inspect dealer's premises.

3694. Any license granted under the provisions of section 8 may be granted subject to such conditions as shall be thought necessary, and may be revoked or suspended by the person or persons authorized to grant such licenses. Act XXVIII. 1857, sect. 11.

Conditions and revocation of license.

3695. No arms or ammunition, and no sulphur or saltpetre, shall be imported either by sea or by land into any part of the territories, in the possession of and under the British government in India, without the license of the governor general in council or of the executive government. Act XXVIII. 1857, sect. 12.

Arms, ammunition, and sulphur, &c., not to be imported without license.

3696. If any person shall import or attempt to import without such license, either by sea or by land, into any part of the said territories, any arms or ammunition, or any sulphur or saltpetre; or shall aid or assist in such importation or in such attempt to import; or shall knowingly conceal or assist in concealing any arms or ammunition, or any sulphur or saltpetre, imported without such license;—he shall be liable, on conviction before a magistrate, to imprisonment with or without hard labor for any term not exceeding two years, and also to a penalty not exceeding one thousand rupees; and the articles so imported shall be confiscated if the convicting magistrate shall so adjudge. Act XXVIII. 1857, sect. 13.

Penalty for importation without license.

3697. The provisions of the two last preceding sections shall not extend to arms and ammunition imported in reasonable quantities for private use; but the collector of customs may at any time detain any such articles, if he shall think it necessary, until he shall receive the orders of government. Nothing in this section shall exempt any person from the obligation of giving any notice required by this Act. Act XXVIII. 1857, sect. 14.

Importation of arms and ammunition for private use.

3698. The governor general in council may by order prohibit the transport of arms, ammunition, military stores, sulphur, or saltpetre, or any particular description of arms, ammunition, or military stores, from one part of India to another, or the transport thereof in any particular direction to be specified in the order, or prohibit the transport thereof except according to such rules and conditions as may be specified in the order; and the executive government of any presidency or place shall have the like power within the territories under their government. Act XXVIII. 1857, sect. 15.

Government may prohibit transport of arms, ammunition, military stores, &c.

Penalty for prohibited transport.

3699. If any person shall transport or cause to be transported, or shall attempt to transport or cause to be transported, or shall aid in transporting, any arms, ammunition, military stores, sulphur, or saltpetre, contrary to such order or to the rules and conditions specified therein, he shall be liable, on conviction before a magistrate, to a penalty not exceeding five hundred rupees; and the articles transported or attempted to be transported shall be confiscated. If any person shall by concealment or other device transport or cause to be transported, or attempt to transport or cause to be transported, such arms, ammunition, military stores, sulphur, or saltpetre, he shall, in addition to the penalty hereby provided, be liable upon such conviction to imprisonment with or without hard labor for a term not exceeding two years. Act XXVIII. 1857, sect. 16.

Persons conveying arms, ammunition, &c under suspicious circumstances may be apprehended without warrant.

3700. If any person shall be found carrying or conveying arms, ammunition, military stores, sulphur, or saltpetre in such a manner or under such circumstances as to afford just grounds of suspicion that the same are being carried by such person with intent to use the same, or that the same may be used, for any unlawful purpose dangerous to the public peace, it shall be lawful for any of the public officers mentioned in section 5 of this Act, or for any other person, to apprehend without warrant the person so carrying or conveying such arms, ammunition, military stores, sulphur, or saltpetre, and to detain such person in custody in order that he may be dealt with according to law. If any person be apprehended by a person not being a magistrate, deputy magistrate, or assistant to a magistrate, or police officer, he shall be delivered over as soon as possible to a police officer; and all persons apprehended by or delivered to a police officer under the provisions of this Act shall be carried before a magistrate or other officer competent by law to punish him for the offence or to commit him for trial. Act XXVIII. 1857, sect. 17.

Procedure if apprehended by other than magistrates, &c.

Government may prohibit sale of sulphur.

3701. Whenever the governor general in council or the executive government shall consider it necessary so to do, they may by order prohibit the sale of sulphur; and any person selling sulphur contrary to such order shall be liable, on conviction before a magistrate, to a penalty not exceeding five hundred rupees; and all sulphur belonging to such person shall be confiscated if the convicting magistrate shall so adjudge. Act XXVIII. 1857, sect. 18. The governor general in council or the executive government may also at any time seize all sulphur in the possession of any person, and detain the same for such time as they may deem necessary for the public safety. Act XXVIII. 1857, sect. 19. Nothing in the two preceding sections shall apply to sulphur kept or sold in reasonable quantities for medicinal purposes. Act XXVIII. 1857, sect. 20. The government may exempt any person from the provisions of sections 18 and 19 upon such conditions, if any, as such government may consider necessary. Act XXVIII. 1857, sect. 21.

Penalty.

Seizure and detention of sulphur by government.

Exception.

Government may exempt persons from the provisions of sections 18 and 19.

Penalty for wilful neglect to give notice of possession of ammunition &c. in certain cases.

3702. The government may require all persons having in their possession ammunition or other military stores or sulphur, in any greater quantities than are considered reasonable for private use, to give notice thereof to the magistrate or other officer specified by government; and any person who wilfully neglects to give such notice shall be liable,

on conviction before a magistrate, to imprisonment with or without hard labor for a term not exceeding two years, and shall also be liable to a fine not exceeding five thousand rupees ; and all ammunition, military stores, or sulphur in the possession of such person or upon his premises shall be confiscated. Act XXVIII. 1857, sect. 22.

3703. If any magistrate have reasonable cause for suspecting that arms, ammunition, or sulphur liable to confiscation are in any house, building or other place, or that any arms, ammunition, or sulphur are in any house, building, or other place in the possession of any person in whose possession they cannot be left with safety to the public peace, he may, with such assistance as he shall think necessary, by night or by day and by force if necessary, enter and search any such house or place, or cause the same to be entered and searched. It shall be competent to a magistrate to delegate to any of his European assistants the powers conferred on him by this section. Act XXVIII. 1857, sect. 23.

Power to enter and search houses.

3704. The governor general of India in council, or the executive government of any presidency or place, or the chief commissioners of the Punjab and Oude respectively, or the commissioners of Nagpore and Scinde respectively, or any other persons authorized by government, may order a general search for arms, ammunition, or sulphur to be made, by any officers or persons named in such order, in any district or place specified therein. The persons authorized by such order, and all persons acting under their authority, shall have the like powers of entry, search, and seizure as are conferred by the last preceding section. Act XXVIII. 1857, sect. 24.

General search for arms, ammunition, &c., may be ordered in any district.

3705. If, on any search being made, any person shall refuse to produce or point out to the persons making the search, or shall conceal or attempt to conceal, any arms, ammunition, or sulphur, such person may be apprehended without warrant, and shall be liable, on conviction before a magistrate, to imprisonment with or without hard labor for a term not exceeding two years in addition to any other penalty to which he may be subject under this Act. Act XXVIII. 1857, sect. 25.

Penalty for not producing or for concealing arms, ammunition, &c., when search made.

3706. After such time as shall be mentioned in the order of government extending the provisions of this section to any district or place, or, if no time be mentioned, after one week from the publication of the order in the district or place, no person shall manufacture, use, or have in his possession any cannon, howitzer, or mortar, without a license from the governor general of India in council or from the executive government of any presidency or place. If any person shall manufacture, use, or have in his possession any cannon, howitzer, or mortar, without such license, he shall be liable, on conviction before a magistrate, to a fine not exceeding two thousand rupees, and to imprisonment for a term not exceeding two years ; and such cannon, howitzer, or mortar may be seized and shall be forfeited to government. Any person who has in his possession any cannon, howitzer, or mortar at the time when this section takes effect in any district or place, and who shall be unwilling to apply for a license to retain possession thereof, may surrender the same to the magistrate within such period as aforesaid. The provisions of this section shall not extend to any cannon,

Penalty for making, using, or keeping cannon, &c., without license, in any district to which this section is extended.

Surrender of cannon, &c., by persons not willing to take out license for retaining possession thereof.
Exception of armament of ships.

howitzer, or mortar forming part of the ordinary armament of any ship or vessel. Act XXVIII. 1857, sect. 26.

Penalty for assaulting or resisting any person in the execution of any power vested in him by this Act.

3707. Whoever assaults or resists, or aids or assists any person in assaulting or resisting, any person in the execution of any power vested in him by this Act, shall be liable, on conviction before a magistrate, to a fine not exceeding two hundred rupees, or to imprisonment with or without hard labor for any term not exceeding six calendar months. Act XXVIII. 1857, sect. 27.

Notice and limitation of suits.

3708. No suit, action, or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act without giving to such person a month's previous notice in writing of the intended action and of the cause thereof, nor after tender of sufficient amends, nor after the expiration of three months from the accrual of the cause of action or other proceeding. Act XXVIII. 1857, sect. 28.

Imprisonment if fine not paid.

3709. If any fine or penalty imposed by a magistrate under the authority of this Act be not immediately paid, the magistrate may commit the offender to jail, there to be imprisoned according to the discretion of the magistrate for any term not exceeding six months where the amount of the fine or penalty shall not exceed five hundred rupees, and for any term not exceeding twelve months in any other case; the commitment to be determinable in each of the cases aforesaid on payment of the amount. Act XXVIII. 1857, sect. 29.

Rewards to informers.

3710. Any fine or penalty levied from any person convicted of an offence under this Act, or any portion of such fine or penalty, may be awarded to the person on whose information the conviction shall take place. Act XXVIII. 1857, sect. 30.

Interpretation of the word "magistrate."

(Commissioners of police in presidency towns may exercise the powers hereby given to a magistrate, other than powers of conviction and confiscation which he with the police magistrate.

3711. The word "magistrate" shall include any person exercising the full powers of a magistrate. And within the presidency towns and in the Straits' settlement, all powers of conviction and confiscation upon conviction given by this Act to a magistrate, shall be exercised by the police magistrates; and all other powers given by this Act to a magistrate may be exercised by the commissioner of police; and all notices hereby required to be given to a magistrate shall in any such presidency town or in the Straits' settlement be given to the commissioner of police. Act XXVIII. 1857, sect. 31.

Persons having the immediate superintendence of the police may be vested with the powers hereby given to a magistrate, other than powers of conviction and confiscation.

3712. Whenever in any presidency or place the immediate control and superintendence of the police is vested in any person other than the magistrate or such commissioner of police as aforesaid, the executive government may order that all or any of the powers given by this Act to a magistrate, other than powers of conviction and confiscation upon conviction, shall be exercised by such person, and that all notices hereby required to be given to a magistrate shall be given to such person. Act XXVIII. 1857, sect. 32.

Act or any part of it to take effect in any district to which it is extended by government.

3713. This Act, or any part or parts thereof, shall take effect in any district or place to which the same shall be extended by order of the governor general of India in council or of the executive government of any presidency or place. Act XXVIII. 1857, sect. 33.

Parts of district may be withdrawn from the operation

3714. It shall be lawful for the governor general in council or the executive government of any presidency or place from time to time to withdraw from the operation of all

or any of the provisions of this Act any part or parts of any district or place which they may previously have declared to be subject thereto; and in like manner, as occasion shall require to subject the same again to the operation of all or any of the provisions of this Act. Act XXVIII. 1857, sect. 34. of the Act and again made subject to it.

3715. The Act shall continue in force for two years. Act XXVIII. 1857, sect. 35. Duration of Act.
Extended to the end of the year 1859, by Act XIX. 1859.

NOTE.

It is considered unnecessary to insert the following temporary enactments, which will cease to be in force on the dates specified: viz.—

Act XIV. 1857, entitled “AN ACT to make further provision for the trial and punishment of certain offences relating to the army, and of offences against the State.”

Act XVI. 1857, entitled “AN ACT to make temporary provision for the trial and punishment of heinous offences in certain districts.”

Act XVII. 1857, entitled “AN ACT to provide temporarily for the apprehension and trial of native officers and soldiers for mutiny and desertion.”

The duration of these 3 Acts was extended to the end of the year 1859 by Act XXII. 1858.

Act X. 1858, entitled “AN ACT to authorize the confiscation of villages, the imposition of fines, and the forfeiture of certain offices in cases of rebellion and other crimes committed by inhabitants of villages or by members of tribes; and also to provide for the punishment of proprietors of land who neglect to assist in the suppression of rebellion or in the apprehension of rebels, mutineers, or deserters.” *This Act will cease to be in force on the 19th March 1860.*

Act XI. 1858, entitled “AN ACT to authorize the infliction of corporal punishment in certain cases.” *This Act will cease to be in force on the 4th April 1860.*

Act XIII. 1858, entitled “AN ACT for the punishment of persons who unlawfully possess or conceal arms or other property belonging to Her Majesty or to the East India Company.” *This Act will cease to be in force on the 4th April 1860.*

Act XXVI. 1858, entitled “AN ACT to make further provision for the trial and punishment of offences against the State.” *This Act will cease to be in force after the end of the year 1859.*

SECTION III.

OF PRINTING PRESSES.

Under what rules
periodical works of
news may be pub-
lished.

3716. No printed periodical work whatever, containing public news or comments on public news, is to be published within the territories of the British government in India except in conformity with the rules hereinafter laid down. The printer and publisher of every such periodical work are to appear before the magistrate of the jurisdiction, within which such work shall be published, and are to make and subscribe in duplicate the following declaration:—"I, A. B. declare that I am the printer (or publisher, or printer and publisher) of the periodical work entitled——, and printed (or published, or printed and published) at——:" and the last blank in this form of declaration is to be filled up with a true and precise account of the premises where the printing or publication is conducted. As often as the place of printing or publication is changed, a new declaration is necessary. As often as the printer or publisher, who has made such declaration, leaves the territories of the British government in India, a new declaration from a printer or publisher, resident within the said territories, is necessary. Act XI. 1835, sect. 2.

Form of declara-
tion to be made by
printer and pub-
lisher.

When new decla-
ration is necessary.

Penalty for breach
of the above rules.

3716a. Whoever prints or publishes any such periodical work, as is hereinbefore described, without conforming to the rules hereinbefore laid down; or whoever prints or publishes, or causes to be printed or published, any such periodical work, knowing that the said rules have not been observed with respect to that work; is, on conviction, to be punished with fine to an amount not exceeding 5,000 rupees, and imprisonment for a term not exceeding 2 years. Act XI. 1835, sect. 3.

The originals of
such declarations
where to be de-
posited.

3716b. Each of the two originals of every declaration so made and subscribed, as is aforesaid, is to be authenticated by the signature and official seal of the magistrate before whom the said declaration has been made; and one of the said originals is to be deposited among the records of the office of the said magistrate, and the other original is to be deposited among the records of the supreme court of judicature, or other Queen's court, within the jurisdiction of which the said declaration has been made. And the officer in charge of each original is to allow any person to inspect that original on payment of a fee of one rupee; and is to give to any person applying a copy of the said declaration, attested by the seal of the court which has the custody of the original, on payment of a fee of 2 rupees. Act XI. 1835, sect. 4.

Such originals
may be inspected,
and copies taken.

Copy of such de-
claration to be suf-
ficient proof of the
identity of the prin-
ter or publisher.

3716c. In any legal proceeding whatever, as well civil as criminal, the production of a copy of such a declaration as is aforesaid, attested by the seal of some court empowered by this Act to have the custody of such declarations, is to be held (unless the contrary be proved) to be sufficient evidence, as against the person whose name is subscribed to such declaration, that the said person was printer, or publisher, or printer and publisher (according as the words of the said declaration may be), of every portion of every periodical work

whereof the title corresponds with the title of the periodical work mentioned in the said declaration. Act XI. 1835, sect. 5.

3716d. Provided always that any person, who has subscribed any such declaration as is aforesaid, and who subsequently ceases to be the printer or publisher of the periodical work mentioned in such declaration, may appear before any magistrate and make and subscribe in duplicate the following declaration: "I, A. B. declare that I have ceased to be the printer (or publisher, or printer and publisher) of the periodical work entitled——." And each original of the latter declaration is to be authenticated by the signature and seal of the magistrate before whom the said latter declaration has been made; and one original of the said latter declaration is to be filed along with each original of the former declaration. And the officer in charge of each original of the latter declaration is to allow any person applying to inspect that original on payment of a fee of one rupee, and is to give to any person applying a copy of the said latter declaration, attested by the seal of the court having custody of the original, on payment of a fee of 2 rupees. And in all trials in which a copy, attested as is aforesaid, of the former declaration has been put in evidence, it is lawful to put in evidence a copy, attested as is aforesaid, of the latter declaration; and the former declaration is not to be taken to be evidence that the declarant was, at any period subsequent to the date of the latter declaration, printer or publisher of the periodical work therein mentioned. Act XI. 1835, sect. 6.

How persons, who have signed such declaration, may relieve themselves of the responsibility by making certain declaration; which is to limit the period during which the former declaration is sufficient proof of the identity of the printer or publisher.

3716e. Every book or paper printed within the territories of the British government in India is to have printed legibly on it the name of the printer and of the publisher, and the place of printing and of publication: and whoever prints or publishes any book or paper otherwise than in conformity with this rule is, on conviction, to be punished by fine to an amount not exceeding 5,000 rupees, and by imprisonment for a term not exceeding 2 years. Act XI. 1835, sect. 7.

Penalty for printing book not bearing legibly the name of the printer and publisher, and the place of printing and publication.

3716f. No person is, within the territories of the British government in India, to keep in his possession any press for the printing of books or papers, who has not made and subscribed the following declaration before the magistrate of the jurisdiction wherein such press is: "I, A. B. declare that I have a press for printing at ——:" and this last blank is to be filled up with a true and precise description of the premises where such press is. Whoever keeps in his possession any such press without making such a declaration is, on conviction, to be punished by fine to an amount not exceeding 5,000 rupees, and by imprisonment for a term not exceeding 2 years. Act XI. 1835, sect. 8.

Declaration to be made on establishment of press for the printing books or papers.

Penalty for breach of this rule.

3716g. Any person who, in making any declaration under the authority of this Act, knowingly affirms an untruth, is, on conviction thereof, to be punished by fine to an amount not exceeding 5,000 rupees, and imprisonment for a term not exceeding 2 years. Act XI. 1835, sect. 9.

Punishment for affirming an untruth in any such declaration.

3716h. It is imperative upon a magistrate, under the above provisions, to sentence any person convicted of a breach of them to imprisonment in addition to fine. If the fine is not

In all such cases imprisonment must be adjudged in addition to fine.

* *v para.* 1848. Paid, it is to be levied under Act II. 1839,* and is not commutable to a further period of imprisonment. Const. No. 1325.

Annual return of
printing presses.

3716i. The magistrate is to furnish annual returns in the forms given in appendix F, Nos. 20 and 21. They are to include every printing press at which any periodical work or any book, or pamphlet, in any vernacular or Oriental language, has been printed or published during the year. The magistrates will probably have no difficulty in making up the returns, as the printer and publisher of every periodical work, and the owner of every printing press, is required by law to make declaration of the same before a magistrate; and it is not likely that such persons will be otherwise than willing to furnish all information required for statistical purposes. In those districts in which there are no presses, from which periodical or other works in any dead or living Oriental language issue, a remark to that effect will be sufficient. C. O. Sup. Pol. *L. P.* No. 5 of 1853.

SECTION IV.

OF LOTTERIES AND GAMBLING.

3717. In the territories subject to the government of the East India Company, all lotteries not authorized by government are to be deemed common and public nuisances, and against law. Act V. 1844, sect. 1.

Lotteries are illegal.

3718. No person is to keep in the said territories, publicly or privately, any office or place for the purpose of drawing any lottery not authorized by government, or to have any such lottery drawn, or knowingly to suffer any such lottery to be drawn in his or her house; and any person so offending is, for every such offence, upon conviction before a justice of the peace or magistrate, to be punished by fine not exceeding 5000 rupees. Act V. 1844, sect. 2.

Penalty for keeping an office for drawing of lotteries or for allowing such to be drawn in the house.

3719. No person is, under any pretence, device, or description whatsoever, to agree to pay any sum, or to deliver any goods, or to do or forbear doing any thing for the benefit of any person, whether with or without consideration, on any event or contingency relative or applicable to the drawing of any ticket, lot, number, or figure in any such lottery; or to publish any proposal for any of the purposes aforesaid; and any person, offending in any of the matters mentioned in this section, is for every such offence, upon conviction before a justice of the peace or magistrate, to be punished by fine not exceeding 1000 rupees. Act V. 1844, sect. 3.

Penalty for taking part in any lottery, or publishing any proposal for such purposes.

3720. Every fine, which is incurred under the provisions of this Act, is to be applied, one half to the use of government, and the other half to the use of the informer or informers. Act V. 1844, sect. 4.

Disposal of such fines.

3721. There is no specific enactment in the regulations by which persons found playing in gambling houses are punishable by the magistrate. He should therefore, in any case of doubt, take a futwa from the law officer, and proceed in conformity with his exposition of the Mahomedan law. (a) Const. No. 891.

Gambling how far cognizable by magistrate.

(a) It is said in the chapter of the Hedaya "Of Kirahcent or abominations," that "it is abominable (makrooh) to play at chess, dice, or any other game; for if any thing be staked it is gambling, which is expressly prohibited in the koran; or if, on the other hand, nothing be hazarded, it is useless and vain. Beside, the prophet has declared all the entertainments of a Mussulman to be vain excepting three; the breaking in of his horse; the drawing of his bow; and the playing and amusing himself with his wives. Several of the learned, however, deem the game of chess to be allowed, as having a tendency to quicken the understanding; which opinion has also been ascribed to Shaker, and Mahk." The word "makrooh" here used is taken to apply to anything, "which in its qualities nearly approaches to unlawful, without being actually so." But it is also said in the chapter "Of evidence" that "the testimony of a person who plays for a stake at dice or chess is inadmissible, because the gaming in that manner is ranked in the number of great crimes." The prohibition of gaming is deduced from the saying of the prophet, "whoever plays at chess or dice does, as it were, plunge his hand into the blood of a hog." *Hed. Trans.* vol. 2, page 688; and vol. 4, page 122.

All wagers are null and void; and are not to be enforced in the courts.

3722. All agreements, whether made in speaking, writing, or otherwise, by way of gaming or wagering, are to be null and void: and no suit is to be allowed in any court of law or equity for recovering any sum of money or valuable thing alleged to be won on any wager or entrusted to any person to abide the event of any game, or on which any wager is made. Act XXI. 1848, sect. 1.

SECTION V.

OF THE SALE OR EXPOSURE OF OBSCENE BOOKS AND PICTURES.

Penalty for the sale or exposure of obscene books, pictures, &c.

3723. Whoever, within the territories in the possession and under the government of the East India Company, in any shop, bazar, street, thoroughfare, high-road, or other place of public resort, distributes, sells, or offers, or exposes for sale, or wilfully exhibits to public view, any obscene book, paper, print, drawing, painting, or representation; or sings, recites, or utters any obscene song, ballad, or words, to the annoyance of others; shall upon conviction, as hereinafter provided, before a magistrate, be liable to a fine not exceeding 100 rupees, or to imprisonment, with or without hard labor, for a period not exceeding three months, or to both. Act I. 1856, sect. 1.

Apprehension of offender

3724. It shall be lawful for any person whatsoever to apprehend any person found committing any of the above-named offences, and forthwith to deliver him to a police officer of the place where he shall have been apprehended, to be taken before any magistrate having jurisdiction in such place; and it shall be the duty of every police officer to use his best endeavours to apprehend and to convey before a magistrate any person that he shall find so offending, together with such obscene books, papers, prints, drawings, paintings, and representations, as may be found with such person. Act I. 1856, sect. 2.

Manner of procedure by magistrate.

3725. Upon information given or charge preferred, upon oath or solemn affirmation, a magistrate, within whose jurisdiction the offence may have been committed, may issue a summons for the appearance, or a warrant for the apprehension, of any person accused of any of the offences enumerated in section 1, and such magistrate shall proceed under the rules of the general law to hear and determine the case. Provided that it shall not be necessary to require the presentation of a complaint in writing, nor to require the attendance of any complainant, any thing contained in sect. 6, Reg. IX. 1807* or any other law to the contrary notwithstanding. Act I. 1856, sect. 3.

* See para. 16b.

Magistrate required to seize and destroy obscene books, &c.

3726. Every magistrate is required to destroy, or cause to be destroyed, all such obscene books, papers, prints, drawings, paintings, or representations, as may come within his power or control. Act I. 1856, sect. 4.

Importation of obscene books, pictures, &c., prohibited.

3727. After the passing of this Act, it shall not be lawful for any person to import into any part of the aforesaid territories any obscene book, print, or picture; and every such book, print, or picture shall be forfeited and shall be seized by any officer of customs, and the same shall be destroyed by such officer. Act I. 1856, sect. 5.

3728. All orders or sentences passed under this Act shall be appealable in the usual manner under the regulations and laws that are or may be in force relating to appeals from the orders of magistrates or other officers exercising the powers of a magistrate. Act I. 1856, sect. 6.

Appeals from orders or sentences passed under this Act.

3729. Nothing contained in this Act shall apply to any representation sculptured, engraved, or painted, on or in any temple, or on any car used for the conveyance of idols. Act I. 1856, sect. 7.

Act not to apply to representations in temples, &c.

3730. No conviction, order, or judgment of any justice of the peace shall be quashed for error of form or procedure, but only on the merits; and it shall not be necessary to state on the face of the conviction, order, or judgment, the evidence on which it proceeds; but the depositions taken, or a copy of them, shall be returned with the conviction, order, or judgment, in obedience to any writ of *certiorari*; and if no jurisdiction appears on the face of the conviction, order, or judgment, but the depositions taken supply that defect, the conviction, order, or judgment shall be aided by what so appears in such depositions. Act I. 1856, sect. 8.

Conviction to be quashed on merits only. Form of conviction, &c.

3731. The following words in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction (that is to say):—The word “magistrate” shall include joint magistrates and persons lawfully exercising the powers of a magistrate and justices of the peace. Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number. Words importing the masculine gender shall include females. Act I. 1856, sect. 9.

Interpretation.

SECTION VI.

OF AFFRAYS.(a)

3732. The word “affray,” in all criminal proceedings, is to be rendered “khanaljun-gee” (in Bengalee “danga hangama”); and the term “hangama” is to be restricted to indicate a riot or tumultuous assembly. C. O. No. 37 of vol. 3.

Vernacular terms.

3733. As it is not clear what amounts to a riot in Mahomedan law, and no definition is to be found in any of our own authorities, the court adopted the following definitions

Definition of riot.

(a) The term “affray” has a much more extended signification in this code than that assigned to it in English law, and seems to include not only the *affray*, but also the *riot*, *roul*, and *unlawful assembly*, and perhaps some other offences, of that code. The *riot*, *roul*, and *unlawful assembly* appear to differ only as to the execution of, or motion to execute, the purpose intended; and may be defined to be—a tumultuous disturbance of the peace by 3 or more persons, assembling together of their own authority, with an intent mutually to assist one another against any one who should oppose them in the execution of some enterprize of a private nature, involving some circumstance of actual force or violence, or at least an apparent tendency thereto, *in terrorum populi*, but not necessarily involving any act of personal violence. The *affray* in the English legal sense is taken for a public offence to the terror of the people. There may be an *assault*, which will not amount to an *affray*, as when it happens in a private place out of the hearing or seeing of any except the parties concerned; and there may be an *affray* which does not amount to a *riot*, as when a sudden disturbance occurs between people who have met together on a lawful occasion. An *affray* may be committed by 2 persons, a *riot* by not less than 3. No quarrelsome or threatening words whatever amount to an affray. *Russell and Archbold*.

taken from the fifth report of the English law commissioners. "If three or more persons assemble together for the purpose of executing some unlawful and violent act, or any act whatsoever under such circumstances of violence, threats, tumult, numbers, display of arms, or otherwise as are calculated to create terror and alarm, and shall wholly or in part execute such purpose." "But it is not a riot, where three or more persons being assembled together for any lawful purpose happen, on a sudden quarrel, to commit a breach of the peace, however violent, for their meeting was innocent and lawful, and the subsequent breach of the peace happened unexpectedly, without any previous intention concerning it. In such an affray, only those are guilty who actually engage in it." Reports *L.P.* 1852, part 2, page 882.

Magistrate warned, no must superficial investigation, and the connivance of the police and amlah with the zameendars.

3734. The court warn the magistrates against a superficial investigation of the causes of affrays, and against the connivance of the police officers and amlah with the landholders, who are generally the instigators of affrays. They observe that, if an affray takes place near a thana without any exertion of the darogah to prevent it by timely interposition or notice to the magistrate, there must be a presumption against him of gross neglect, or corruption and collusion. And they direct therefore the vigilant attention of magistrates to the conduct of the police officer, zameendars, and amlah, and require their prompt interposition, not only to prevent the immediate mischief, but also to determine the right of possession to the land, which is the subject of dispute.* The truth of the case will be best ascertained by witnesses unconnected with either of the parties. C. O. No. 50 of vol. 1.

* *1 para. 3783 of seq.*

Duties of Police.

To be present at fairs, &c.

3735. The darogahs of police are to proceed in person, or to depute one or more of their officers, as circumstances may require, to attend and maintain the peace at fairs, and during the celebration of festivals, at all places where any considerable number of persons are collected together. Reg. XX. 1817, sect. 18, cl. 1.

The darogah, mohur, or jemadar, is immediately to proceed to the spot, on receiving intimation; and is to require the landholder to disperse the disputants;

3736. On receiving intimation of any tumultuous meeting or assemblage of persons, or of any projected riot or serious disturbance, whether arising from trespass or disputes regarding land, crops, tanks, watercourses, reservoirs, or other causes, the darogah is either to proceed in person, or to cause the mohur, or jemadar, to repair immediately to the spot; and the police officer, employed on such duty, is, in the first instance, to proceed to the residence of the zameendar, talookdar, or farmer, in whose estate or farm the disputants are said to be, and to require him instantly to cause them to disperse. Reg. XX. 1817, sect. 18, cl. 2.

then to try to persuade them to have recourse to arbitration or law;

then to warn them of the consequences;

then to strive to seize the leaders;

then to collect evidence regarding the parties;

and lastly to set people to watch,

3737. In the event of this measure proving insufficient, he is to endeavour to prevail on the parties to disperse, and either to adjust their differences among themselves by arbitration or panchayat, or to have recourse to a court of judicature for the decision of their claims. In the event of such endeavours proving fruitless, the police officer, who is present, is to declare aloud that if any person is killed, wounded, or violently beaten, all persons concerned in the affray will be brought to trial before the criminal courts. The police officers are at the same time to strive to seize the leaders, or principal offenders; and in the event of their failing so to do, they are to endeavour to ascertain their names and places of abode, and to collect sufficient evidence, if practicable, from persons unconnected with the parties, of the circumstances of the affray, the causes which led to it, and who were the first aggressors; and, after taking these steps, they are to set people to watch the further

proceedings of the parties, and immediately to communicate the whole of the particulars to the magistrate, who is to adopt the necessary measures for bringing the offenders to condign punishment. Reg. XX. 1817, sect. 18, cl. 3.

and to report to the magistrate.

3738. The officers of police are required to proceed to the spot as above directed, and to use every precaution to prevent affrays; but they are to confine themselves to maintaining the peace, and are on no account to take part with or to afford assistance to either side in the dispute; and darogahs are strictly prohibited, unless under the special instructions of the magistrate, from deputing burkundazes, or muzkooree peons, to defend the property of either party applying for the aid of the police on the ground of alleged apprehension of affray. Reg. XX. 1817, sect. 18, cl. 4.

Police officers are not to assist either side; nor are burkundazes or peondahs to be deputed to protect property.

3739. If the cause of dispute is land or crops, the darogah, in his report to the magistrate, is to describe the land contested, or the quantity or quality of the grain; and in boundary disputes, where the claims of individuals may be better explained by a plan of the ground, he is to prepare and transmit, with his report, a sketch showing the outline and general position of the portions of land claimed by the contending parties. Reg. XX. 1817, sect. 18, cl. 5.

Darogah, in his report, is to describe the land or crops in dispute.

3740. It is not necessary that in every case of affray both parties should be committed for trial. Const. No. 778.

Trial.

Both parties need not be tried.

3741. Affray not being enumerated in cl. 1, sect. 3, Reg. X. 1821*, as one of the offences in which a magistrate is authorized to tender a pardon to the persons concerned, the evidence of participators in a case of affray is not admissible against other individuals, implicated in the same offence. Const. No. 535. But parties who were themselves implicated in the affray, but have been released by the magistrate, may be admitted as witnesses. Reports *W. P.* 1856, part 1, page 31.

Participators cannot be admitted as approvers.

* *r. para.* 103.

3742. All parties actually present and taking part in a disturbance or breach of the peace, should be charged as principals. The term accomplice is inapplicable in such a case. Reports *W. P.* 1855, part 1, page 639.

There are no accomplices in an affray.

3743. The discrepancy of the evidence of the two parties in an affray affords no ground for the acquittal of those charged with being concerned therein: credit must be given to that evidence which appears best supported by the circumstances of the case. *N. A. R.* vol. 3, page 221.

Evidence to be balanced.

3744. In an outbreak and riot attended with homicide which occurred during the procession of the mohurram, it was held that as the presence of the Mahomedans, however great may have been their number, was not a criminal presence, and as there was nothing illegal in the ceremony in which they were engaged, therefore those only, who could be shown to have been guilty of any overt act, or in other words to have taken an active part in the riot, were liable to punishment. Reports *W. P.* 1856, part 1, page 176. Proof of the mere presence of certain persons on the spot during a riot is not sufficient to warrant conviction. It is requisite in such cases that it be proved that the prisoners took an active part in the proceedings of the rioters. Reports *W. P.* 1854, part 1, page 557.

Where presence is not criminal, active participation must be shown;

or that the force used in resisting was greater than was requisite.

3745. In a trial for riot with homicide, which arose from the attempt of the servants of an indigo factory to sow lands by force, the court held that the only question was, whether the force used by the villagers to resist and drive away the factory people was so much greater than the occasion required, that it cannot be pleaded in justification of their acts. Reports *L. P.* 1855, part 2, page 767.

But each participant is responsible for the whole result.

3746. But where a man is the acknowledged adherent of one of the parties engaged in the affray, and it is shown that he joined in it with the object of attacking or resisting the force opposing the party, it is a matter of no consequence whether he struck the person killed in self-defence or not. His overt acts, as a party concerned, render him responsible for the whole result of the encounter. Reports *L. P.* 1855, part 2, page 424.

The party in the wrong cannot be held responsible for homicide of persons on their own side.

3747. In an outbreak in jail where the sepoys were obliged to fire on the convicts in order to check their attack upon the authorities, and one man was killed and others wounded, it was ruled that the prisoners could not be held legally responsible for the homicide or wounding, although it necessarily arose from the acts of the prisoners. Reports *L. P.* 1855, part 2, page 611.

Parties opposing the entry of a purchaser of a putnee talook are to bear the entire responsibility of a consequent breach of the peace.

3748. Should the late incumbent of a putnee talook, or his late under-tenants, continue to oppose the entry of the new purchaser, notwithstanding the issuing of a proclamation by the civil court declaring the just rights of the latter (for which he is at liberty to apply on meeting with opposition), or should there be reason to apprehend a breach of the peace on the part of any one, the aid of the police officers, and of all public officers, who are at hand and capable of affording assistance, is to be given to the new purchaser on his presenting a written application for the same; and in the event of any affray or breach of the peace occurring, the entire responsibility is to rest with the party opposing the lawful attempt of the purchaser to assume his rights. Reg. VIII. 1819, sect. 15, cl. 3.

Officer serving process is not bound to show his warrant unless demanded.

3749. In a case where an affray was the consequence of an attachment of property made by a peon under the order of a moonsiff, the court held that the officer serving the process is not necessarily bound to exhibit the warrant upon which he acts, if no demand is made for a sight of it. *N. A. R.* vol. 4, page 251.

Resistance to a legal process irregularly served, is a misdemeanor.

3750. Resistance offered by a farmer to persons legally authorized to distrain his effects, is a criminal act and punishable by imprisonment, notwithstanding that the distress be levied in an irregular manner, as the farmer always has it in his power to gain redress by an application to a court of justice. (a) *N. A. R.* vol. 1, page 302.

Recourse to violent means, either for enforcing or resisting disputed claims, is a misdemeanor.

3751. It is no ground for a total remission of punishment that the accused were not of the aggressing party in an affray; as, by the rule established in the preamble of Reg. XLIX. 1793, (b) the having recourse to violent means either for enforcing or resisting disputed claims, is not only highly criminal but unnecessary, from the parties having it at

(a) In English law the legality or illegality of the act intended to be done is not material, if there be violence and tumult. *Russell*.

(b) This is the original law for preventing affrays respecting disputed boundaries; but it has been repealed, as well as Reg. XV. 1824, by Act IV. 1840.

all times in their power to obtain redress by application to the courts of judicature : but the nizamat adawlut, in awarding punishment, may admit the circumstance to operate in mitigation. N. A. R. vol. 2, page 339.

3752. It would be illegal to punish the person who profited by an affray, unless there were proofs that the person so punished had been guilty of instigating or conniving at it. Mere suspicion of instigation or connivance cannot warrant the infliction of punishment. Const. No. 619. C. O. No. 63 of vol. 2.

Persons, profiting by an affray, cannot be punished without proof of instigation or connivance.

3753. The act of assembling armed men, or taking other unlawful measures, with the evident intention of committing a breach of the peace, is an offence punishable by the magistrate as a misdemeanor under the discretionary powers vested in him by sect. 19, Reg. IX. 1807.* This is ruled in accordance with the Mahomedan law as well as the tenor of cl. 1, sect. 2, Reg. IV. 1825.(a) Const. Nos. 132 and 664.

Magistrate's powers.

Intent to commit.

* *v. para. 705.*

3754. Inconsiderable affrays are classed among the petty offences, which the magistrate is competent to punish under sect. 8, Reg. IX. 1793, for which see paras. 703 and 3827.

Inconsiderable affrays.

3755. All persons charged with being concerned in affrays as defined in Reg. XLIX. 1793 (*Ced. Prov. Reg. XXXII. 1803*) [*i. e.* when any person having a claim to any disputed land, or crops, in the possession of another, attempts to possess himself of such land or crops by force] are, upon due proof of the offence, provided the affrays be unattended with homicide, severe wounding, or other aggravating circumstance, punishable by the magistrate or joint magistrate of the district, in which the affray has occurred, without commitment to the sessions court. Reg. I. 1822, sect. 3.

Affrays regarding land, or crops, if unattended with homicide, severe wounding, or other aggravating circumstance, are in the competence of the magistrate.

3756. In such cases the magistrate is competent to punish the offender by imprisonment, with or without labor,(b) for a period not exceeding one year, and a fine not exceeding 200 rupees, commutable if not paid to a further period of imprisonment not exceeding one year, so that the whole period of imprisonment in no case exceeds two years. Reg. VIII. 1828, sect. 3.

Punishment in such cases.

3757. The above provisions are applicable only to cases of affrays regarding lands and their produce ; and cannot be made to apply to other cases of affray from whatever cause arising. Const. No. 1154.

This refers only to affrays regarding lands or their produce.

3758. It is not competent to a magistrate or joint magistrate in any case of affray to award corporal punishment [and therefore no additional imprisonment in lieu thereof] ; nor is a magistrate to refer any such case for examination and decision to his assistant, unless such assistant is invested with the special powers designated in sect. 2, Reg. III. 1821. Reg. I. 1822, sect. 4.

Corporal punishment.

Affrays not to be referred to assistant not vested with special powers.

3759. The power vested in a magistrate by the above provisions of awarding labor during the original term of imprisonment, must be considered to extend equally to the further

Sentence of labor in such cases.

(a) This regulation contains the rules for requiring recognizances and security for keeping the peace ; and the clause cited mentions incidentally the above offence as one cognizable by the criminal courts : see para. 3830.

(b) Under sect. 3, Reg. II. 1834, fetters cannot be adjudged in such cases, and the prisoner must be allowed the option of commuting the labor by the payment of a specified fine : see para. 1360.

period of imprisonment adjudged in default of payment of the fine imposed; subject, of course, as regards both periods to the rule laid down in cl. 1, sect. 3, Reg. II. 1834.*
 * *v. par a.* 1360. Const. No. 972.

Limit of imprisonment.

3760. A magistrate is not competent, under the above provisions, to sentence a prisoner convicted of affray at once to two years' imprisonment. The period in addition to one year is awardable only in default of payment of a certain fine. Const. No. 774.

Security may be required in addition to above sentence.

3761. Reg. VIII. 1828 does not in any way interfere with the power vested in magistrates by Reg. IV. 1825 [to require security to keep the peace]. Under this construction a magistrate is competent to punish to the full extent of the power conveyed by the above provisions, and in addition to such sentence to require the prisoner to furnish security, or be imprisoned for a year in default: the whole term of imprisonment not exceeding three years, if the demand for security is not complied with. Const. No. 1290.

If attended with slight wounding

3762. Under the terms of sect. 3, Reg. I. 1822, an affray attended with *slight* wounding lies within the competence of the magistrate. Const. No. 423.

In cases of wounding the instrument of offence is immaterial.

3763. In supersession of Const. Nos. 623 and 628 (by which cases of affray attended with wounding, if the wounds were inflicted by a sword, were ruled to be beyond the competence of a magistrate) it is declared that a magistrate is empowered, in such cases, to commit or punish, as he may judge most expedient, without regard to the instrument of offence, and with reference solely to the nature and extent of the injuries inflicted by the aggressors. C. O. No. 53 of vol. 3, para. 1.

Cases in which the servants of an indigo factory have been engaged.

3764. Under orders of government, the magistrates are required to submit to the commissioners of circuit, for their examination, every case of violent affray, attended with aggravating circumstances, in which the servants of an indigo factory have been engaged, whether the European at the head of the establishment has been included in the charge or not. The commissioner of circuit is to furnish with his annual report, in his capacity of superintendent of police, a specific statement of such cases. C. O. No. 22 of vol. 2.

Case to be committed if attended with homicide, severe wounding, or an aggravating circumstance

3765. In all cases of affray, attended with homicide, severe wounding, or other aggravating circumstance, the magistrate is to bring the offenders to trial before the sessions court, committing them to prison, or enlarging them upon bail, as the circumstances of each case appear to require. Reg. I. 1822, sect. 5.

Power of session judge.

Minimum of sentence.

3766. Whenever any person committed for trial to the sessions court, on a charge of affray attended with homicide, is convicted by the law officer with the concurrence of the session judge of such offence, it is not competent to the session judge to sentence the person so convicted to a less term of imprisonment than five years from the date of such sentence, with or without labor. Reg. II. 1823, sect. 2.

If such sentence appears too severe, trial to be referred.

3767. Whenever, with regard to any person or persons so convicted, the session judge is of opinion that the punishment above stated is more than adequate to the offence, he is to issue no sentence in the trial, but is to refer the case for the sentence of the nizamat adawlut, setting forth at large in his letter of reference the grounds on which he applies for a mitigation. Reg. II. 1823, sect. 3.

3768. Nothing in this regulation [*i. e.* in the two preceding paragraphs] is to be construed to alter the existing rules, by which a session judge is competent, in such cases, to pass a sentence of 7 years' imprisonment with or without the addition of labor; or those by which, where he considers even that punishment to be inadequate to the offence, he is authorized to refer the trial for a still heavier punishment to the nizamat adawlut. (a) Reg. II. 1823, sect. 4.

Maximum of sentence.

3769. So much of Reg. II. 1823, or of any other regulation in force, as authorized the courts of circuit to adjudge corporal punishment by stripes in cases of affray, was rescinded by sect. 2, Reg. XII. 1825. And it is held by the nizamat adawlut that additional imprisonment, in lieu of corporal punishment, cannot be awarded on conviction of offences not punishable by stripes before the passing of Reg. II. 1834. N. A. R. vol. 6, page 1.

Corporal punishment, or imprisonment in lieu thereof, not to be adjudged.

3770. The minimum of punishment in cases of affray attended with homicide, established by the above provisions, is to be considered to apply to such cases only, in which both parties are found guilty of having had resort, by premeditation, to that mode of adjusting their differences;—and is not to be deemed applicable to cases arising out of a sudden quarrel, in which no premeditated purpose of affray is established;—nor to assaults or other aggressions in which the assailed party is not shown, by their previous preparation, or in any other way, to have been ready and intent to meet their adversaries in the field of combat;—nor is it to be construed to apply to cases of affray attended with homicide, in which persons guarding and protecting crops, grain, or property, in a legal manner, are attacked by persons trespassing, or others, or who, in legal and just defence of the property under their charge, resist aggression in self-defence. In all such cases the session judges, agreeing with the *futwas* of their law officers, are to pass such legal sentence as is suitable to the offence of the several parties, the same as if Reg. II. 1823 had no existence. Reg. VI. 1828, sect. 2.

Restriction of application of rule regarding minimum of punishment. It does not refer to unpremeditated cases, or to persons resisting aggression on property under their charge.

3771. With reference to the above rules, the nizamat adawlut direct, that, whenever in cases of affray attended with homicide a sentence of less than five years' imprisonment is awarded, the session judge should invariably insert in his remarks on the trial that the affray was not premeditated on both sides. C. O. No. 178 of vol. 3.

Judge to state in such case that the affray was unpremeditated.

3772. The nizamat adawlut would not recognize the distinction made by the Mahomedan law between him who is proved to have struck the deceased in an affray, and those present aiding and abetting. (b) [But this dictum appears to be superseded in practice by subsequent decisions; see paras. 3774 and 3775.] In this case all the prisoners were sentenced to five years' imprisonment. N. A. R. vol. 1, page 299.

Precedents.

Mahomedan law.
Affray with homicide;

3773. The prisoner, though there was no proof that he was actually present, was convicted of having instigated and directed an affray attended with homicide and

instigating but not present,

(a) The latter part of this section was repealed by cl. 1, sect. 7, Reg. XII. 1825; but, as that provision has been superseded by sect. 6, Act XXXI. 1841, the rule given in the text is still extant.

(b) Any person taking part in a riot, whether by word, sign, or gesture, or by wearing the badge of the rioters, is himself a rioter; for in this case all are principals. *Russell*.

wounding; and was sentenced to imprisonment in banishment for life. N. A. R. vol. 1, page 8.

with homicide and
wounding;

3774. Affray attended with homicide and wounding; the prisoners, who inflicted the wounds and were most active, were sentenced to 10 years', the instigators and leaders to 7 years', and the remainder to 5 years' imprisonment, all with labor and irons. N. A. R. vol. 2, page 370. Where it was proved that the one party were the instigators and had caused the affray by oppressive conduct, they were sentenced for 14, 10, and 5 years, while the leaders on the other side were imprisoned for 4 years only. N. A. R. vol. 6, page 179. Where the ryots, the assailants, had been provoked by ill-usage, and had suffered severely in the affray, they were sentenced, the principal leader to 2 years', and the others to 1 year's imprisonment with fine in lieu of labor. N. A. R. vol. 6, page 220.

with homicide,

3775. Affray with homicide; the prisoner who killed the deceased was sentenced to 10 years', four others to 7 years', and one to 3 years' imprisonment with labor and irons; one prisoner, in consideration of his youth, was sentenced to the mitigated punishment of imprisonment for one year. N. A. R. vol. 2, page 381. Affray with homicide: sentence, imprisonment for 5 years. N. A. R. vol. 3, page 221. Affray with homicide, under circumstances of mitigation: sentence, imprisonment for 2 years. N. A. R. vol. 2, page 339. Affray in which a havildar died from the effects of the blows, the affray having been produced by the misconduct of the sepoys: two youths who were present were sentenced to imprisonment for one year. N. A. R. vol. 2, page 492. A prisoner convicted of having been present, so as to encourage and support, though he did not take an active part in, an affray with homicide, was sentenced to imprisonment for 2 years with labor and irons. Reports *J. P.* 1851, page 567.

with wounding;

3776. Affray attended with wounding: the court adverted to the respectability of one of the ringleaders remitted imprisonment, and sentenced the parties to pay fines according to their respective degrees of guilt; viz. the ringleader on one side a fine of 300 rupees, and his party a fine of 10 rupees each, or imprisonment for 3 months; the ringleader on the other side a fine of 10 rupees, and his party a fine of 5 rupees each, or imprisonment for one month. N. A. R. vol. 3, page 141. Affray attended with wounding; sentence, four of the principals to 5 years' imprisonment, and five accessories to 3 years' imprisonment. N. A. R. vol. 3, page 273.

with plunder,
wounding, and ab-
duction of persons
thereafter missing.

3777. Affray attended with aggravating circumstances, the prisoners having made a violent attack upon a village, rifled certain houses, slightly wounded several persons, and violently abducted others thereafter missing: sentence; the ringleader to 12, the two principals to 10, and the others as inferior agents to 7 years' imprisonment with labor in irons. N. A. R. vol. 5, page 21.

Case in which
defence was held
justifiable.

3778. A party defended his house against a wanton and unprovoked assault, during which two of the assaulting party were killed. Held that the homicide was justifiable on the part of those who acted on the defensive; and the aggressors were sentenced to 5 years imprisonment. N. A. R. vol. 5, page 15.

3779. Affray with murder in resistance of civil process: the leaders were sentenced to imprisonment for life in Alipore jail; three most actively concerned to imprisonment for 14 years, and the rest to imprisonment for 7 years, all with labor in irons. N. A. R. vol. 2, page 387. Affray in resistance of civil process: sentence; the instigator to imprisonment for one year, and three others to imprisonment for 6 months. N. A. R. vol. 1, page 302. Affray with homicide in resistance of civil process: sentence, one to imprisonment for 14 years, and two others for 7 years. N. A. R. vol. 4, page 251.

In resistance of civil process, with murder;

unaggravated;

with homicide;

3780. The prisoners, convicts, convicted of riot and insurrection in jail, attended with severe wounding of the jail darogah, and causing the authority of the magistrate and the session judge to cease in the jail for six days, were sentenced, the leader to imprisonment with labor and irons in transportation for life; and the others to imprisonment with labor and irons in banishment for 14 years. N. A. R. vol. 6, page 61. See other cases in paras. 2732 *et seq.*

Riot and insurrection in jail.

SECTION VII.

OF THE PREVENTION OF AFFRAYS REGARDING LAND, AND OF SUMMARY SUITS IN CASES OF FORCIBLE DISPOSSESSION.

3781. With reference to the very general terms of Act IV. 1840, the nizamat adawlut hold that its applicability cannot be confined within the narrow circle of Reg. XV. 1824, which has been repealed by the present law, by which it is evidently intended to empower the magistrates to enquire into disputes relating to the possession of lands, of which before the passing of that enactment they were not competent to take cognizance. This resolution was recorded in order to supersede various constructions of Reg. XV. 1824, which restricted the interference of the magistrate to cases of dispossession or disputed possession in which the proprietors of the land were engaged, declaring it inapplicable to cases in which ryots or under-tenants disputed the right of cultivation only. C. O. No. 124 of vol. 3.

General applicability of the provisions of Act IV. 1840.

3782. The provisions of Act IV. 1840 are applicable to persons of every class or description, whether British-born subjects or others. Act IV. 1840, preamble.

British born subjects as well as others amenable.

3783. Whenever a magistrate is certified, that a dispute likely to induce a breach of the peace exists concerning any land, premises, water, fisheries, crops or other produce of land, within the limits of his jurisdiction, he is to record a proceeding stating the grounds of his being so certified, and is to call on all parties concerned in such dispute (whether proprietors, dependent talookdars, farmers, under-farmers, ryots, or other persons) to attend his court in person, or by agent, within a reasonable time, and to give in a written statement of their respective claims as respects the fact of actual possession of the subject of dispute. And the magistrate is, without reference to the merits of the claims of any party to a

Magistrate how to proceed on being certified of a dispute regarding land, &c. likely to induce a breach of the peace.

The party who was in possession

at the commencement of the dispute to be kept in possession.

right of possession, to proceed to inquire what party was in possession of the subject of dispute when the dispute arose ; and, after satisfying himself upon that point, is to record a proceeding declaring the party whom he decides to have been in such possession to be entitled to retain possession, until ousted by due course of law, and forbidding all disturbance of possession until such time : and if necessary the magistrate is to put such party into possession, and to maintain him in possession, until the rights of the parties disputing be determined by a competent court. Act IV. 1840, sect. 2.

Meaning of the term "certified."

3784. In a case where a person complained, not of a completed forcible dispossession, which would have brought the case under section 4, but of an interference, and probable other encroachments, which were likely to lead to a breach of the peace, and the police were directed to make enquiries, their report was held to be quite a sufficient ground for the magistrate to be "certified" of the dispute, so as to authorize his proceeding under section 2. Any thing by which a magistrate can be certified is enough. Letter of N. A. to Judge of Jessore, No. 357, April 8, 1853.

Subject of dispute to be attached if satisfactory proof of possession is not adduced.

3785. If the magistrate, in the cases mentioned in the preceding section, is unable to satisfy himself as to what party was in possession of the subject of dispute when the dispute arose, he may attach the subject of dispute until the rights of the parties be determined by a competent court, giving the collector information of the attachment ; and, if the subject of dispute be land, the provisions of Reg. V. 1827 regarding attachment by order of a civil court(a) are to apply to attachments by order of a magistrate made under this section. Act IV. 1840, sect. 3.

But attachment is not to be made pending decision of suit.

3786. A magistrate is not authorized to attach lands (paying revenue to government or under-tenures) pending the decision of such case, or to call on the collector to attach lands according to Reg. V. 1827, before he has come to a decision in the case. Const. No. 1347.

The power of attachment can be exercised only in cases intitled under the previous section.

3787. The authority given by section 3 is restricted to the class of cases mentioned in section 2. Orders of attachment cannot issue in cases of complaint under section 4. A complaint of dispossession under section 4, if not proved, must be dismissed, the defendant being left in possession, and the plaintiff referred to the civil court. Letter of N. A. to Judge of Patna, No. 566, May 25, 1849 in C. O. Board of Revenue L. P. No. 15, May 30, 1851.

Magistrate how to proceed on receiving complaint that complainant has been forcibly

3788. If any party complains to a magistrate that he has been without authority of law forcibly dispossessed of any land, premises, water, fisheries, crops or other produce of land, within the jurisdiction of such magistrate, whether the same were possessed by such

(a) The following is the rule of Reg. V. 1827 in such cases. The court wishing to attach landed property is to issue a precept to the collector of land revenue of the district wherein the land is situated, directing him to hold it in attachment, and to appoint a person for the due care and management of the estate under good and adequate security for the faithful discharge of the trust, in a sum proportionate to the extent thereof. Persons having an interest in the property may appeal to the board of revenue against the person selected as manager by the collector. The precept above-mentioned is to state specifically the property to be included in the attachment ; and the attachment is not to be withdrawn without a further precept from the court to that effect.

party as proprietor, dependent talookdar, farmer, under-farmer, ryot, or otherwise, the magistrate is to require the party or parties complained against, and any other parties concerned, to appear and make defence in person or by agent within a reasonable time; and if after the examination of the necessary witnesses and documents, the complaint appears to him to be substantiated, he is to record a proceeding ordering the party complaining to be put again into possession of the subject of dispute, and maintained in possession until the right to possession be determined by a competent court; provided that no such order is to be passed, unless the party complaining of having been so dispossessed prefers his claim within one month from the time of such dispossession. Act IV. 1840, sect. 4.

dispossessed without authority of law.

Complaint must be lodged within one month.

3789. It has been held by the majority of the two courts that a complainant under sect. 4, Act IV. 1840 cannot be sworn. N. A. R. vol. 6, page 93.

Complainant cannot be sworn.

3790. Absolute proof of actual “forcible” dispossession is an indispensable condition to the restoration of the party complaining to possession: the mere assertion of an apprehension, that a breach of the peace will ensue, and that dispossession will follow, is insufficient, under the terms of sect. 4 of the Act, to legalize the reception and investigation of such complaints, it being obviously the intention of the law, that the complaint of having been “without authority of law forcibly dispossessed” of the disputed property shall be substantiated “by the examination of the necessary witnesses and documents,”—or, in other words, by the adduction of direct evidence, before any order can legally issue for the re-instatement of the party complaining in possession of the subject of dispute. The several criminal authorities, competent to try and determine suits under Act IV. 1840, are to be careful to observe the legal obligation above recited; and to remember that, in complaints of the nature adverted to, the only point to be established by the complainant is the fact of forcible dispossession. In like manner, the only point to be tried on revision of the case in appeal, is whether such forcible dispossession has been established or not; and any endeavour to ascertain and record “the right to possession” is not only irrelevant, but constitutes in fact an illegal and undue arrogation of authority on the part of the deciding officer: evidence of forcible dispossession carries with it, as a matter of course, proof of antecedent possession, the maintenance of which without reference to right is the object of the law, and the utmost limit of authority conferred by the Act under consideration. Session judges are desired to enforce a strict adherence to the foregoing principles in the decision of such cases, and to correct any departure therefrom which falls under their observation. C. O. No. 200 of vol. 3. *W. P.*

There must be direct evidence of forcible and illegal dispossession;

and this is the only point to be proved: the right to possession is not to be considered by the magistrate, or in appeal.

3791. If neither of the parties in a suit [brought into the magistrate’s court under either sect. 2 or sect. 4] will appear and produce their evidence and proofs, the magistrate should strike the case off the file, taking such measures as appear necessary to prevent a breach of the peace, extending even to the attachment of the property in dispute if deemed necessary to secure such prevention. Should only one of the parties after due notice attend and produce his proofs, the case should be tried *ex parte*. Const. No. 1029.

If neither party produces their evidence and proofs;

or if only one party.

3792. The party wrongfully dispossessed is to be restored to the possession of the land with the crop upon it, although the latter has been sown by the wrongful dispossessor. Const. No. 378.

Standing crops must go with the land.

The ryot who has cultivated the crop of indigo is in possession, and not the planter from whom he has received advances.

3793. A, a ryot, asserting himself to be under engagements to B, an indigo planter, complains that C, another planter who states that he made advances to A, is about forcibly to cut the crop. Held that A being in possession may deliver the disputed plant to either B or C, and that the magistrate, under Act IV. 1840, may prohibit C from attempting to take forcible possession; C having his remedy in the civil court under Reg. VI. 1813 and Act X. 1836. Const. No. 1359.

Possession is retained during absence by locking the door of the house.

3794. The plaintiff having locked up his house at Jaunpore previous to his departure for Benares, his possession must be held to have continued during his absence; and the violent entry by the defendant, effected by forcibly opening a lock, must be considered to constitute a case of forcible dispossession.(a) Const. No. 434.

Right of possession of purchaser not acknowledged to exclusion of the mortgagee in possession.

3795. It was held that a magistrate had clearly exceeded his powers in awarding possession to the purchaser of mortgaged property to the exclusion of the mortgagee, on the plea that the mortgage had been redeemed, although the purchaser up to the date of the dispute had never been in possession. Const. No. 393.

Mortgagee retained in possession against the proprietor, till formally dispossessed by civil court.

3796. In a dispute between a proprietor and a mortgagee of an orchard, the magistrate, considering the possession of the latter to have been satisfactorily established, directed him to be maintained in possession. The session judge, on appeal, reversed his decision, and directed the magistrate to maintain the proprietor in possession and to refer the mortgagee to the civil court. The nizamat adawlut held that the course adopted by the magistrate for the maintenance of the mortgagee in possession, till formally dispossessed by the usual process laid down in the regulations, was right. Const. No. 1366.

Disputes between co-partners of an undivided estate cannot be tried.

3797. Claims to the money rents of a fractional portion of a joint undivided estate cannot be heard under Act IV. 1840. Such claims can arise only among co-sharers, or the representatives of co-sharers; but when there is a dispute about a distinct and defined portion of *land*, whether between the co-sharers in a village, or between the proprietors of adjoining villages, and as a consequence to the right of management and collection as regards such land, complaints for dispossession may of course be brought under the Act cited. When the lands, to which the dispute relates, can be defined and specified, there is jurisdiction under the Act, but not otherwise. Letter of N. A. August 24, 1849 in C. O. Board of Revenue *J. P.* No. 15, May 30, 1851. Letter of N. A. to Judge of 24-Pergunnahs, No. 470, April 7, 1852.

If lands cannot be specified, there is no jurisdiction.

How far magistrate can interfere in regard to dispossession of moveable property.

3798. In a dispute for the possession of moveable property, the magistrate is competent to interfere, with a view to restitution, only when it has been acquired under circumstances, which would authorize the laying of a direct criminal charge, such as theft, or fraud, or criminal trespass, or the like. If there is no proof of any such violence, or such other illegal act in the acquisition, and the person, with whom it is discovered, has detained it on the plea of some claim or lien on the property, the matter is then one of civil and not criminal cognizance. Const. No. 1349. C. O. No. 64 of vol. 4.

(a) This construction (of Reg. XV, 1824) held that the plaintiff's absence was a sufficient cause for the delay in bringing the suit; but Act IV. 1840 provides that no suit is to be admitted after the expiration of one month from the time of dispossession; and therefore there can be no sufficient cause for delay beyond that period.

3799. A magistrate is competent to determine boundary disputes under these provisions; but he is of course merely to define the boundary of the land, which was in the possession of the party ousted before the dispute arose, leaving the question of right to be determined by the civil court. Const. No. 724.

Boundary disputes may be determined under these provisions:

3800. Magistrates are prohibited from taking cognizance under Act IV. 1840 of boundary disputes of the nature for which provision is here made [*i. e.* boundaries fixed and marked out in the Western provinces by the revenue authorities, who are likewise required to settle all disputes regarding them]. But whenever the magistrate has reason to apprehend any breach of the peace in consequence of a disputed boundary, he is to certify the circumstances to the collector of revenue, who is bound immediately to mark off the boundary, and to uphold the possession of the parties according to the demarcation. Act I. 1847, sect. 6. *H.P.*

but not in the Western provinces, where the boundaries have been marked out by the revenue authorities.

3801. If, in cases instituted under this Act, the subject of dispute be newly formed land, whereof it appears to the magistrate that no party has ever had possession, the magistrate is to award possession to the party to whom the right of possession belongs according to law or custom,^(a) and is to maintain that party in possession, until the right to possession be determined by a competent court. Act IV. 1840, sect. 5.

Newly-formed land of which no party has had possession.

(a) The following are the only rules for the guidance of the courts in disposing of claims to new alluvial formations:—

Whenever any clear and definite usage of *shikast-paowast*, respecting the di-junction and junction of land by the encroachment or recess of a river, may have been immemorially established for determining the rights of the proprietors of two or more contiguous estates divided by a river (such as that the main channel of the river dividing the estates shall be the constant boundary between them, whatever changes may take place in the course of the river, by encroachment on one side, and accession on the other), the usage so established shall govern the decision of all claims and disputes relative to alluvial land, between the parties whose estates may be liable to such usage. Reg. XI. 1825, sect. 2.

Claims and disputes relative to alluvial lands to be decided by immemorial and definite usage, when such shall be clearly recognized and established;

Where there may be no local usage, of the nature referred to in the preceding section, the general rules, declared in the following section, shall be applied to the determination of all claims and disputes, relative to lands gained by alluvion or by dereliction either of a river or the sea. Reg. XI. 1825, sect. 3.

where no such local usage may be established, by the following rules.

When land may be gained by gradual accession, whether from the recess of a river or of the sea, it shall be considered an increment to the tenure of the person to whose land or estate it is thus annexed, whether such land or estate be held immediately from government by a zumeendar or other superior landholder, or as a subordinate tenure by any description of under-tenant whatever: provided that the increment of land thus obtained shall not entitle the person in possession of the estate or tenure, to which the land may be annexed, to a right of property or permanent interest therein beyond that possessed by him in the estate or tenure to which the land may be annexed, and shall not in any case be understood to exempt the holder of it from the payment to government of any assessment for the public revenue, to which it may be liable under the provisions of Regulation II. 1819, or of any other regulation in force: nor, if annexed to a subordinate tenure held under a superior land-holder, shall the under-tenant, whether a khloodkast ryot holding a maurusi istimrari tenure at a fixed rate of rent per beegah, or any other description of under-tenant liable by his engagements, or by established usage, to an increase of rent for the land annexed to his tenure by alluvion, be considered exempt from the payment of any increase of rent to which he may be justly liable. Reg. XI. 1825, sect. 4, cl. 1.

Land gained by gradual accession from the recess of a river or the sea, to be considered an increment to the tenure of the person to whose estate it may be annexed.

The above rule shall not be considered applicable to cases in which a river, by a sudden change of its course, may break through and intersect an estate, without any gradual encroachment, or may

Lands separated by a sudden change of the

Disputes regarding right of use of any land or water by the public, or individuals, or classes of persons.

3802. If a dispute arises concerning the right of use of any land or water, the magistrate, within whose jurisdiction the subject of dispute lies, may enquire into the matter; and, if it appears to him that the subject of dispute was open to the use of the public, or of any person, or of any class of persons, the said magistrate may order that possession thereof shall not be taken or retained by any party to the exclusion of the public, or of such person, or of such class of persons, as the case may be, until the party claiming such possession obtains the decision of a competent court adjudging him to be entitled to such exclusive possession. Provided that the magistrate is not to pass any such order as aforesaid, if the matter be such that the right of use is capable of being exercised at all times of the year, unless that right has been ordinarily exercised within three months from the date of the institution of the inquiry; or, in cases where the right of use exists at particular seasons, unless such right has been exercised without discontinuance before the dispossession of which complaint is made. Act IV. 1840, sect. 6.

If a bund constructed by a person on his own land is injurious to the property of another.

3803. If a person should construct a bund on his own land, which proves injurious to the property of another, the case would come more properly within the jurisdiction of the civil than of the criminal courts; but cases may arise in which the immediate interference of the magistrate would be necessary and proper to prevent either a breach of the peace or any serious injury to the property of the complainant. Const. No. 1091.

Opposition to, or contravention of, orders of magistrate passed under this Act.

3804. Any person opposing by force the execution of an order for possession or use given under this Act, or refusing obedience thereto, or knowingly contravening the same, as long as it remains in legal force, is, together with all persons aiding and abetting, liable on conviction before a magistrate to be sentenced to simple imprisonment for a term not

course of a river, being clearly recognized, remain the property of the original owner.

by the violence of its stream separate a considerable piece of land from one estate, and join it to another estate, without destroying the identity and preventing the recognition of the land so removed. In such cases the land, on being clearly recognized, shall remain the property of its original owner. Reg. XI. 1825, sect. 4, cl. 2.

Island churs thrown up in a navigable river (the channel between the island and the shore not being fordable) belong to government; but if fordable, to others.

When a *chur* or island may be thrown up in a large and navigable river (the bed of which is not the property of an individual), or in the sea, and the channel of the river, or sea, between such island and the shore may not be fordable, it shall, according to established usage, be at the disposal of government—But, if the channel between such island and the shore be fordable at any season of the year, it shall be considered an accession to the land tenure or tenures of the person or persons, whose estate or estates may be most contiguous to it, subject to the several provisions, specified in the first clause of this section, with respect to increment of land by gradual accession. Reg. XI. 1825, sect. 4, cl. 3. See Act IX. 1847.

In small and shallow rivers, how to be determined.

In small and shallow rivers, the beds of which with the julkur right of fishery may have been heretofore recognized as the property of individuals, any sand bank or *chur* that may be thrown up, shall, as hitherto, belong to the proprietor of the bed of the river, subject to the provisions stated in the first clause of the present section. Reg. XI. 1825, sect. 4, cl. 4.

All other cases to be determined by usage or equity.

In all other cases, *viz.* in all cases of claims and disputes respecting land gained by alluvion, or by dereliction of a river, or the sea, which are not specifically provided for by the rules contained in this regulation, the courts of justice, in deciding upon such claims and disputes shall be guided by the best evidence they may be able to obtain of established local usage, if there be any applicable to the case, or, if not, by general principles of equity and justice. Reg. XI. 1825, sect. 4, cl. 5.

exceeding 6 months, or to fine not exceeding 200 rupees, commutable if not paid to a period of simple imprisonment not exceeding 6 months, or to both imprisonment and fine as aforesaid. Act IV. 1840, sect. 7.

3805. Where a European British subject had been guilty of the offence described in sect. 7, Act IV. 1840, by retaining possession of a house awarded to another party, and refusing to admit the constable who first served him with a summons, and then held a warrant for his apprehension,—the advocate general was of opinion that in all cases of warrants of arrest of a party *convicted* by a magistrate or justice of the peace of any offence under the Act in question (or indeed under any Act giving similar power) the warrant may be executed (if necessary) by the breaking of a door or of the house in which the offender may be, *after demand of admittance* accompanied by *production of the warrant* and refusal to admit or open. The remedy is two fold, for the officer may not only break the door in execution as aforesaid of the warrant for the arrest of the convicted offender; but, if he hold also the magistrate's order to put the ousted party again into possession, he may, after demand and refusal of admittance, with production of his order as above, break open the door in execution of that order; and, once within the house, may arrest the offender under the other warrant. Opinion of Advocate General, May 31, 1853.—From this it would appear that the case must be tried *ex parte*, if the defendant fails to appear on summons, and that the warrant must issue after conviction; and that in such case it is necessary to prove the due service of the summons and the failure to appear on the date specified therein, by the deposition of the officer employed to serve it.

Proceedings of
European British
subject refusing to
yield possession.

3806. A magistrate is competent, upon reason shown, to require security from a party in a case under Act IV. 1840 not to disturb the peace in attempting to recover possession awarded in favor of his opponent; and in such case the provisions of Act V. 1848 are applicable as to the period for which he can demand security. But it cannot often be necessary to call for security, even upon any sufficient ground of presumption that the party cast will disregard the magistrate's orders under the Act, for section 7 of that law authorizes punishment in the event of disobedience of it. Letter of N. A. to Judge of Tirhoot, No. 1148, October 5, 1849.

Security to keep
the peace may be
also required; but
it is rarely neces-
sary.

3807. In passing an order under these provisions, the magistrate need not be guided by a previous decision of the collector, unless such collector was at the time engaged in making a settlement, or was acting under the powers vested in collectors by sect. 16, Reg. VII. 1822, and sect. 2, Reg. IV. 1828; which latter provision suspends the powers of a magistrate to interfere in such disputes in regard to all mahals pending settlement,—the time of settlement being defined to commence from the date on which the settlement officer issues orders for adjusting the boundaries, for measuring any of the lands, or for making a census of the inhabitants of any village or portion of a village belonging to such mahal (of which intimation is to be given to the magistrate within whose division the village is situated), and to close with the day on which he is informed that the settlement as made and revised by him has been finally confirmed; and all police officers are required to give immediate and efficient support to the revenue officers in the execution of their duties.—In such

Orders of magis-
trate are not affect-
ed by decisions of
revenue authorities
except pending set-
tlement;

cases, the previous summary decisions passed by magistrates may be revised, altered, or reversed by collectors, or other officers exercising the powers vested in them by this regulation, intimation of such revision, alteration, or reversal, being invariably given to the magistrate; and the parties in whose favor judgment is passed by the collector, or other officer above-mentioned, are to be maintained in possession, until the decision is altered or reversed by a superior board or by a competent superior court. By cl. 2 sect. 34, Reg. VII. 1822, the magistrate is required to certify all cases of such disputes, in lands pending the settlement, to the revenue authorities, who are to investigate and determine the case, transmitting to the magistrate in cases of forcible dispossession, or forcible disturbance of possession, copies of their first proceeding in the case and of the roobakareo containing the final award. Const. No. 445. See also supplementary index to the constructions.

in which cases such disputes are to be referred to the revenue authorities.

Cases occurring in khas mahals.

3808. Cases of dispossession, which occur in estates held khas on account of government, should be disposed of by the revenue authorities under cl. 4, sect. 14, Reg. VII. 1822, and cl. 2, sect. 2, Reg. IX, 1825. Letter of N. A. No. 1356, September 8, 1843.

Thakbust papers to be examined by magistrate in boundary disputes.

3809. But it seems doubtful how far this rule is still held in cases instituted before the magistrate; for, in reply to a suggestion of the board of revenue that all boundary disputes in pergunnahs demarcated and under demarcation should be transferred to the superintendent of survey, the nizamat adawlut observed that cl. 2, sect. 34, Regulation VII. 1822 has been virtually superseded by Act IV. 1840, in which the language of the law is imperative, that cases under the Act shall be decided by the magistrate; and therefore declined to comply with it. But they issued an injunction to magistrates in cases of boundary disputes, in pergunnahs of which the professional survey has been completed, to send for and inspect the thakbust papers and survey maps before coming to a decision. Letter of N. A. to Board of Revenue, No. 564, June 26, 1851. C. O. No. 61 of vol. 4. *L. P.*

Objection of a third party to execution of decree may be received.

3810. A third party petitioned a magistrate against the execution of a decree passed *ex parte*, on the ground that it had been obtained by collusion, and that he had throughout been in possession of the land, which formed the subject of this suit. The nizamat adawlut held that the magistrate did right in receiving such objection to the execution of the decree and in disposing of them. Letter of N. A. to Judge of 24-Pergunnahs, No. 1097, August 13, 1852.

Judge may take up the appeal of a third party.

3811. So, where a person, not a party to the suit, petitioned the magistrate against the execution of his decree on the ground that the water-course, which had formed the subject of dispute, did not belong to either of the contending parties but to himself; and the magistrate refused to entertain the objection on the ground that he could not review his judgment; and the petitioner appealed from this order long after the expiry of the month allowed for the appeal from the decree, and the judge reversed the order in appeal, and directed the magistrate to enquire into the case, the nizamat adawlut held that the judge was right in hearing the appeal, as it was preferred in time. Letter of N. A. to Judge of 24-Pergunnahs, No. 1096, August 13, 1852. *Semble*.—A magistrate can review his own judgment on the petition of a third party; or, rather, the right of action of C is not barred by a former suit between A and B for the same land.

3812. A summary decision passed in a criminal court, affecting civil rights, should be upheld, until it is set aside by the judgment in a regular suit, even though the law under which it was passed has been subsequently altered. Const. Nos. 639 and 937.

Decision to be upheld until set aside by a regular suit.

3813. Lists of exhibits filed in cases under Act IV. 1840, should be on plain paper. C. O. No. 7, August 25, 1854. *L. P.*

Lists of exhibits.

3814. All orders passed under this Act are appealable in the usual manner under the regulations and laws, that are or may be in force relating to appeals from the orders of magistrates or other officers exercising the powers of magistrates. Act IV. 1840, sect. 8.

Appeals lie as in other cases.

3815. The session judge is competent to use his discretion in suspending at any time the execution of the magistrate's final order, pending the decision of the case in appeal. Const. No. 1157.

Session judge may suspend execution of magistrate's order.

3816. The application of a session judge to be allowed to review his judgment in an appeal under Act IV. 1840, was refused by the nizamut adawlut, on the ground that under sect. 6, Act XXIV. 1837, and sects. 2 and 3, Act XXXI. 1841, the order of the judge in such cases is final, and that Act IV. 1840 leaves no room for review. *Sevestre's Reports, vol. 2, page 155.*

Session judge cannot review his judgment.

3817. The nizamut adawlut cannot interfere with the order of any subordinate criminal court regarding possession of land, as their authority is confined to criminal trials by the terms and spirit of Act XXXI. 1841. Reports *L. P.* 1852, part 1, page 679.

Nizamut adawlut cannot take appeals in such cases;

3818. The decision of the session judge in appeal from the order of a subordinate criminal court in any judicial proceeding other than a criminal trial, is not open to revision by the nizamut adawlut; and in regard to such cases that court possesses no jurisdiction. The provisions of sect. 6, Act XXIV. 1857 are specific and imperative; and bar the interposition of the court: and sections 2 and 3, Act XXXI. 1841 are clearly declaratory of the finality of the session judge's orders in all judicial proceedings other than criminal trials. Such being the case, the court cannot assume to itself jurisdiction on the ground that the orders passed by a session judge are unwarranted or irregular. Sections 2 and 4, Act IV. 1840 declare in distinct and positive terms, that the possession confirmed, or given, under the orders of the magistrate, is to be maintained until the right of the parties disputing be determined by a competent court, subject only to one appeal to the session judge under section 8 of the Act: no review or further proceeding of any kind whatever is mentioned or contemplated by the Act. Reports *L. P.* 1851, page 1453.

or revise the orders of the lower courts on the ground of illegality or irregularity.

3819. In cases instituted under this Act, the magistrate is authorized, with the consent of all the parties, to refer the matter in dispute, so far as it is cognizable under this Act, to an arbitrator or arbitrators for decision, whose award is to be executed as if it were the award of such magistrate. Act IV. 1840, sect. 9.

Case may be referred to arbitration with the consent of all parties.

3820. The simplest form for a magistrate to use in notifying a wish to have the services of any party as an arbitrator, is to send a copy of the roobakaree recording consent to arbi-

Form in notifying to a person that he is requested to arbitrate.

tration with these words, or a translation of them, written below it:—"copy of the above proceeding forwarded to ——— for his information. The attendance of ——— is requested at the office of the magistrate on the ——— th day of ———." Or "he is requested to signify his acceptance of the office of arbitrator by returning this copy with a note stating such acceptance entered on it to the magistrate's office. Date". This copy of the proceeding should be authenticated by the magistrate's official seal and signature. C. O. No. 87 of vol. 4. *L. P.*

Legal right of attachment or seizure not affected by these provisions.

3821. Nothing in this Act contained is to affect the legal exercise of any right of attachment or seizure vested by law in any parties. Act IV. 1840, sect. 10.

Superintendent of police may direct enquiry.

3822. A superintendent of police may order a magistrate to take up a case of disputed possession, although the latter does not deem that measure necessary for the preservation of the peace. Const. No. 886.

Civil court cannot interfere until decision of regular suit.

3823. A civil court cannot stay the execution of an award under Act IV. 1840, pending the decision of a suit instituted to reverse it. Summary Reports S. D. A. April 26, 1847. *L. P.*

Assistants with special powers may decide such cases referred to them.

3824. Assistant magistrates and deputy magistrates vested with special powers are competent to decide cases under the provisions of Act IV. 1840, when such cases are referred to them by the magistrates to whom they are subordinate; and such assistants are to deal with such cases in the same way as magistrates are competent to deal with them under the said Act. Provided always that the magistrates may at all times recall from such assistants any depending cases which have been referred to them under this Act, and which, for the more speedy administration of justice, or for any other reason, the magistrates deem it proper to determine themselves in the first instance. Act XXVII. 1845, sects. 1, and 2. Act X. 1854, sect. 2.

Cases of doubtful jurisdiction.

3825. In a case of disputed possession, the plaintiff asserted that the lands were situated in Purneah, the defendant that they were in Bhaugulpore. The magistrate of Purneah was informed that he should proceed with the investigation; and, if it should appear that the lands were in Bhaugulpore, he should refer the parties to the magistrate of that district, and certify to that officer the proceedings held by him in the case. Const. No. 594.

Limitation of extension of Act.

3826. This Act does not extend to any place beyond the limits of the presidency of Fort William in Bengal, or to the settlements of Prince of Wales' Island, Singapore, or Malacca, or to any place situated within the local limits of the jurisdiction of Her Majesty's supreme court at Calcutta. Act IV. 1840, sect. 11.

CHAPTER III.

OF OFFENCES AGAINST THE PERSON.

SECTION I.

OF ABUSE.

3827. Abusive language and calumny are noted in sect. 8, Reg. IX. 1793 (*Ced. Prov.* sect. 8, Reg. VI. 1803)* among the petty offences declared to be within the competence of the primary powers of magisterial officers. By cl. 1, sect. 12, Reg. XX. 1817† police officers are not to take cognizance of such cases; and all investigations for the purpose of ascertaining the truth or falsehood of such charges are invariably to be conducted by the magistrate in person or his assistant, under sect. 6, Reg. VII. 1811.‡ The books contain no further provisions respecting such cases; but slander of whoredom is one of the five offences for which specific penalties have been prescribed in the koran, and it is therefore necessary to record shortly the provisions of the Mahomedan law regarding it.

How punishable.

* v. para. 703.

† v. para. 2259.

‡ v. para. 353.

3828. This crime is defined to be, the false imputation of whoredom against a married man or woman, who is free, sane, adult, of the Mahomedan faith, and of chaste repute, *i. e.* free from any suspicion of adultery. The reason for requiring chastity in the accused is, “because no scandal attaches to any other persons than those who are of chaste repute, and the accuser of an unchaste person moreover speaks truly.” Equivocal expressions are construed according to the apparent intention of the speaker; and in a case of mutual recrimination, both parties incur the punishment of slander. But no penalty is due for imputing whoredom to a person who has actually committed the offence, whether in the particular instance stated, or in any other; provided the fact be established, either by the positive testimony of four competent witnesses; or by the voluntary acknowledgment of the party accused; or by the evidence of two men, or one man and two women, in proof of a confession of the fact. It is necessary that the slandered person if living, or if dead that the person whose lineage is affected by the imputation, should prosecute the charge and demand the stated punishment, because in this case the right of the individual is blended with the public right; and if the sentence is required by such prosecutor, the offence being legally proved, the magistrate is bound to order the infliction of the penalty. The free confession of the accused, or the evidence of two credible male witnesses, is required to prove the accusation; and a confession once made cannot be retracted. The prescribed punishment is eighty stripes for a free person, and forty for a slave: and the testimony of

Mahomedan law regarding slander of whoredom.

a person, who has once suffered this punishment for slander, is for ever afterwards inadmissible. The slanderer of a deceased person may be prosecuted, if it can be shown that the slander affects the living; and the lapse of time is no bar to the prosecution. It is commendable to relinquish the prosecution of a charge of this nature; and the magistrate is authorized to advise the complainant to renounce his claim, at any time before the charge is established. A single punishment for slander, as for whoredom and wine-drinking, includes all past offences, the design not being private satisfaction, but on a principle of public justice to deter people by an example from the perpetration of such offences; but if a person is guilty of any two, or of all three, of those offences, a separate punishment is to be inflicted for each.(a)

Calumny of public officer.

3829. Calumny against a public officer with respect to his public conduct as a judge, is a very heinous offence, and is punishable both according to Mahomedan law and to the regulations. Reports *L. P.* 1855, part 2, page 442.

SECTION II.

OF PENAL RECOGNIZANCES AND SECURITY TO KEEP THE PEACE.

Persons convicted of a breach of the peace, or of an intention to commit such, may be required, by the court passing the final order, to give muchalka, with or without security, to keep the peace for one year if the sentence is passed by the magistrate, or 3 years if passed by the session judge or nizamat adawlut.

3830. Whenever a person charged with a serious affray, assault, or other violent breach of the peace, or with causing, aiding, or abetting the same, or with assembling armed men, or taking other unlawful measures, with the evident intention of committing the same, is convicted of such charge before any criminal court by which the offence is cognizable; and the court, by which a final sentence or order in the case is passed, is of opinion that it is just and necessary to require a muchalka, or penal recognizance for keeping the peace, with or without security, for the same purpose, from the person so convicted; it is competent to the court, passing the final sentence or order, in such cases to direct that the person so convicted be required to execute a muchalka, or formal engagement, in a sum proportionate to the party's condition in life, and the circumstances of the case, for keeping the peace during such period as it appears proper to fix in each instance; not exceeding one year from the time of the prisoner's discharge, if the sentence or order is passed by a magistrate, joint magistrate, or other officer exercising the functions of a magistrate; or three years, if the sentence or final order is passed by a sessions court, or the court of nizamat adawlut. Reg. IV. 1825, sect. 2, cl. 1.

Such court also in requiring security may provide that the party failing to give security be imprisoned for corresponding periods.

3831. In cases of an aggravated nature, wherein it appears necessary to require security for keeping the peace in addition to the muchalka of the party, it is also competent to the court passing the final sentence or order to direct the same; and to fix the amount of the security-bond (which should never be excessive, and should in all cases be such as it would be proper to enforce in the event of a breach of the engagement) to be executed by the surety or sureties; with a provision that, if the same be not given, the party

required to find the security is to be kept in custody for any time not exceeding the period specified in the preceding clause, according as the order is passed by a magistrate, or session judge, or by the nizamat adawlut. Reg. IV. 1825, sect. 2, cl. 2.

3832. When a magistrate, issuing a warrant for the apprehension of any person accused of a heinous offence, deems it right to authorize the officer, to whom the warrant is committed, to receive bail for the appearance of the accused, he may at the same time authorize such officer to require from him security for keeping the peace while the charge is under investigation;—as has already been noted in para. 335. In such cases the security-bond is to be in the form No. 20 of appendix A. Reg. IX. 1807, sect. 3, cls. 3 and 5.

Magistrate may authorize officer serving a warrant to require security for keeping the peace as well as bail.

3833. So, in cases of manifest necessity, when the darogah or other officer of police is apprehensive of danger to the public tranquillity by the enlargement of a person arrested on a charge of affray, violent assault, or other bailable offence, without security being taken for his peaceable conduct; the party apprehended is to be required, in addition to the bail for his appearance to furnish security for keeping the peace while the charge is under investigation, and the surety (or sureties) is to execute a recognizance according to the form No. 36 of appendix A, in an amount to be regulated by the circumstances of the case, and the condition of the person executing the same. Reg. XX. 1817, sect. 25, cl. 11.

So, police officer, may in certain cases require such security in addition to bail;

3834. Security-bonds taken by police officers should be drawn out on unstamped paper. Const. No. 710.

3835. In the territories subject to the presidency of Bengal, it is lawful for the magistrates and joint-magistrates to take muchalkas or penal recognizances in the form annexed, as well from British subjects as from other persons, in all cases wherein it may appear just and necessary to require the same for the maintenance of the peace in their respective jurisdictions, although the party to be bound in such recognizances may not have been convicted of any specific offence, provided that the amount of the recognizance in all such cases shall be proportionate to the condition in life of the said party and to the circumstances of the case. Act V. 1848, sect. 2.

Magistrates may take muchalkas from any person, although not convicted of any specific offence.

Form of muchalka. Whereas I _____, inhabitant of _____, have been called upon to enter into a muchalka to keep the peace for the term of _____, I hereby bind myself not to commit any act that can occasion a breach of the peace during the said term; and in case of my making default therein I bind myself to forfeit to government the sum of _____ rupees. Dated the _____ day of _____.

Form of muchalka.

3836. In cases of an aggravated nature wherein it appears necessary to require security for keeping the peace in addition to the recognizance of the party, it is lawful for such magistrates to direct the same and to fix a reasonable amount for the security-bond to be executed, in the form annexed, by the surety or sureties. Act V. 1848, sect. 3.

Magistrates may require security in addition to muchalka.

Form of security bond. Whereas _____, inhabitant of _____, has been called upon to give security to keep the peace for the term of _____, I hereby declare myself surety for the said _____ that he shall not commit any act that can occasion a breach of the peace during the said term; and in case of his making default therein I hereby bind myself to forfeit to government the sum of _____ rupees. Dated the _____ day of _____.

Form of security bond.

Magistrate may take muchalka and security for one year without reference to superior authority, and confine in default.

3837. Whenever it appears to the magistrate that the period for which the party should be bound to keep the peace with or without additional security, need not exceed one year, it is lawful for him, without reference to superior authority, to give directions accordingly, and in default of such recognizance or additional security to commit the party to prison in the civil jail until he shall do what has been required of him. Act V. 1848, sect. 4.

If the magistrate requires the muchalka or security for more than one year (the period is never to exceed 3 years) he is to lay his proceedings before the session judge, who may confirm, modify, or annul his orders.

3838. Whenever it appears to the magistrate that the period for which the party should be bound to keep the peace, with or without additional security, ought to exceed the period of one year, the magistrate is to record his opinion to that effect with an order specifying the amount of recognizance and security as well as the number of sureties which should in his judgment be required, and the period for which the recognizance and security should be required, which however is in no case to exceed three years. If the party does not furnish the recognizance and security so required, the proceedings are to be laid before the session judge, who, after examining them and calling for any further information which he may think necessary, is to pass orders on the case confirming, modifying, or annulling the orders of the magistrate; and, if the orders so passed by the session judge confirm to any extent the requisition for recognizance or securities, the session judge is to direct the magistrate to commit the party to prison in the civil jail until he shall do what has been required of him. Act V. 1848, sect. 5.

No person is to be imprisoned for a longer period than that fixed for the muchalka.

3839. Provided always that no party is to be kept in prison under the foregoing provisions of this Act for a longer period than that for which the recognizance and securities have been required from him. Act V. 1848, sect. 6.

The magistrate cannot require security or muchalkas except in the cases above specified.

3840. The regulations do not vest the magistrates with a general power to demand security to keep the peace, whenever there may appear grounds to sanction the measure. The cases in which the magistrate has power to require muchalkas from individuals, and to demand security for keeping the peace, are detailed in the provisions above quoted, and it does not seem proper to extend that power any further. Const. No. 831.

Magistrate cannot order darogah to require muchalka from a person until he has been heard in his defence.

3841. A magistrate is not competent to direct the darogah to require a person to enter into a muchalka to keep the peace, before he has been heard in his defence; after he has heard the defence, he may, if necessary, require the party to execute such muchalka in his presence. Const. No. 620.

Magistrate may insist on personal attendance.

3842. As the object of a magistrate in requiring the personal attendance of a party under Act V. 1848, is to judge of the propriety of taking a personal recognizance from him, it is always in the discretion of a magistrate to insist upon personal attendance when he sees fit. Letter of N. A. to Judge of Dacca, No. 1507, November 3, 1852 in C. O. Sup. Pol. *L. P.* No. 7 of 1852.

Warrant may be issued if summons is evaded.

3843. A magistrate is empowered by Act X. 1845* to issue a warrant for the arrest of a party, who may refuse or neglect to attend in person on a summons, upon proof that due diligence has been used to serve such summons upon him, for the purpose of requiring him to give security under Act V. 1848. C. O. Sup. Pol. *L. P.* No. 4 of 1853.

* See para. 1581.

3844. A session judge cannot direct that a person, who is not before the court as an accused party or otherwise, should be required to execute a muchalka to keep the peace, as no opportunity is afforded to such person of showing cause against it. But he may communicate his opinion to the magistrate, leaving him to proceed in the case under the provisions of Act V. 1848. Reports *W. P.* 1856, part 1, page 106.

Session judge cannot require a person not before the court to execute a muchalka.

3845. All sentences and orders passed under this Act are appealable subject to the general provisions which regulate appeals. Act V. 1848, sect. 10.

Appeals lie as usual.

3846. The provisions contained in sects. 5, 6, and 7, Reg. VIII. 1818 are to be considered applicable to all prisoners confined on requisition of security for keeping the peace, under Reg. IV. 1825, or Act V. 1848, and to the sureties for such persons. [These rules regard the power of the magistrate to release such prisoners, when they are of opinion that they can be set at liberty without hazard to the community; see paras. 3597 to 3600;—they prohibit the removal of prisoners confined in default of security to the jail of a different zillah without the sanction of government, except in emergent cases; see paras. 2988 and 2990;—and they declare in what manner sureties can obtain release from their responsibility, and the continuance of the responsibility after the death of the surety; see paras. 3595 and 3596.] Reg. IV. 1825, sect. 3. Act V. 1848, sect. 7.

Release of such prisoners;

prohibition of removal;

rules regarding sureties.

3847. Whenever it is proved before the magistrate that any such recognizance has been forfeited, he is to proceed to enforce the penalty of such recognizance in the mode prescribed for the satisfaction of decrees of the civil court. Act V. 1848, sect. 8.

Penalty of recognizance to be enforced as decree of civil court.

3848. Whenever it is proved before the magistrate that any such recognizance has been forfeited, if a security-bond has been taken and the magistrate thinks that proceedings should be had upon such bond, he is to give notice to the surety or sureties to pay the penalty, or to show cause why it should not be paid; and, if no sufficient cause be shown, the magistrate is to proceed to recover the penalty from such surety or sureties by the attachment and sale of any of his or their property in the mode prescribed for the attachment and sale of property in satisfaction of decrees of the civil court; and, if the penalty be not paid and cannot be recovered by such attachment and sale, such surety or sureties shall be liable to confinement by order of the magistrate in the civil jail of the station during a period not exceeding six months. Act V. 1848, sect. 9.

Magistrate how to recover the penalty of the security-bond, if the recognizance be forfeited.

3849. A muchalka ought to be in the form prescribed by the Act, and the forfeiture should be engaged for to the government and not to the magistrate; but the court held that such mere irregularities were not sufficient to vitiate the muchalka. Reports *L. P.* 1852, part 1, page 1091.

Irregularity in form does not vitiate muchalka.

3850. The magistrate must distinctly set forth in his order what precise act he considers it shown that the defendant has personally committed, and has thereby brought himself within the predicament contemplated by the legal form of muchalka, before a forfeiture under the law can be adjudged. Reports *L. P.* 1852, part 1, page 1091.

Magistrate must set forth the act, on which he grounds his order of forfeiture.

3851. As under these rules the exact process prescribed for the satisfaction of decrees of the civil court must be followed, so a person confined on forfeiture of his recognizance may

Rules for relief of insolvent debtors applicable to per-

persons confined on forfeiture of recognizance.

claim his release upon proof of insolvency, under the rules applicable to the case of a civil debtor. (Sect. 2, Reg. II. 1806.) Letter from N. A. to Judge of 24-Pergunnahs, No. 1650, December 10, 1852.

All muchalkas and security-bonds may be enforced as above.

3852. All muchalkas and security-bonds which by force of any Act or regulation may be taken by criminal courts of the East India Company, or by magistrates or joint-magistrates, for keeping the peace or for good behaviour, may be enforced in the manner prescribed by sects. 8 and 9 of this Act. Act V. 1848, sect. 11.

Rule when the magistrate takes recognizances as justice of the peace.

3853. The magistrate must be guided by the provisions of Reg. IV. 1825 [and Act V. 1848] in regard to the requisition of penal recognizances from persons, of whatever description, who are subject to his jurisdiction in his capacity of a magistrate of the East India Company: but when it appears necessary to take such recognizances in his capacity of justice of the peace, he should consult the advocate general, if in doubt as to their legality or otherwise. Const. No. 446. It will be observed that Act V. 1848 is applicable to all British subjects.

Magistrate how to proceed to enforce the forfeiture of recognizances taken by him in his capacity of justice of the peace

3854. When a magistrate desires to enforce the forfeiture of recognizances for keeping the peace, which he has taken in his capacity of justice of the peace, he is to transmit such recognizance before the next ensuing sessions of the supreme court to the clerk of the crown, as the only proceeding for the forfeiture is in the supreme court. The recognizance should always distinctly specify the time for which it is to continue in force. Govt. Order, June 9, 1830.

Limitation of amount of such recognizances taken from Europeans.

3855. It follows from the exposition of the law contained in the foregoing order, that the amount of the penalty of such recognizances is not limited by the amount of penalty which a magistrate is authorized to levy from a European under 53 Geo. III. chap. 155, sect. 105. Const. No. 826.

Power of assistant.

3856. Construction No. 529, which declares specially empowered assistants competent to require muchalkas and security under Reg. IV. 1825 is rescinded. C. O. No. 211 of vol. 3.

SECTION III.

OF ASSAULT AND WOUNDING.

Inconsiderable assaults.

* *v. para.* 3827.

3857. Inconsiderable assaults are classed among the petty offences punishable, under sect. 8, Reg. IX. 1793 (*Ced. Prov.* sect. 8, Reg. VI. 1803), by officers empowered to adjudicate criminal cases.* Those of a more serious nature must be dealt with by officers exercising higher powers, or by the magistrate, or committed to the sessions, according to the degree of violence used or the nature of the injuries sustained.

Cases of bone-fracture are to be disposed of by the

3858. The mere circumstance of a bone-fracture does not take a case of assault out of the cognizance of a magistrate; it being left to him to determine, with reference to the

extent of the injury, and other considerations of a similar nature, what cases of this description should be disposed of by himself, and what made over for trial to the sessions court. And it is not competent to the latter authority to cancel a commitment made by the magistrate under this discretionary power, merely on the ground of a difference of opinion in regard to the tribunal before which the case should be brought, and by which consequently the amount of the punishment is to be regulated. C. O. No. 53 of vol. 3, paras. 2 and 3.

magistrate, or committed to the sessions, according to the extent of the injury and intent of the aggressor.

3859. So also, in cases attended with wounding, if the wounds have been inflicted with a sword (which cases were formerly held to be beyond his competence), the magistrate is empowered to commit or to dispose of the case himself as he judges most expedient, without regard to the instrument of offence, and with reference solely to the nature and extent of the injuries and the apparent intent of the aggressor. C. O. No. 102 of vol. 3.

So, in cases attended with wounding.

3860. A magistrate is clearly competent to dispose of a case of burning of the person under his general powers declared by sect. 19. Reg. IX. 1807, and explained in the foregoing circular orders. Reports *L. P.* 1852, part 1, page 211.

Burning the person.

3861. In cases of wounding, the commitment should not be made until the result of the wounds has been put beyond doubt, either by the recovery from danger, or the death of the wounded person. Const. No. 558.

Commitment not to be made, until result of wounds is known.

3862. When a wounded individual is sent by the magistrate for examination as to the nature and extent of his or her wounds, it rests with the surgeon to decide whether such person is to be placed in the hospital for treatment, or not; and the surgeon's order on this point is to be conclusive. C. O. No. 142 of vol. 3.

The surgeon is to decide whether a wounded person sent to him for examination is to remain in the hospital or not.

3863. Any person convicted of having unlawfully and maliciously intended to wound, maim, or otherwise do corporal injury to one individual; and of having, in the prosecution of such intention, accidentally wounded, maimed, or otherwise corporally injured another individual; is to be held punishable for the act committed by him with such unlawful and malicious intention, in like manner as if such act had been perpetrated on the person intended to have been wounded, maimed, or otherwise injured. The law officers of the sessions courts, in such cases, are to be required to state the punishment to which the prisoner would have been liable, if he had committed the act, of which he is convicted, upon the person intended to have been wounded, maimed, or otherwise injured by him; and the sessions courts are to pass sentence accordingly, or to refer the trial to the nizamat adawlut, as the case is referrible to that court, or otherwise, under the general regulations. *Beng. and Ben. Reg.* VIII. 1801, sect. 4. *Ced. Prov. Reg.* VIII. 1803, sect. 10, cl. 4.

Liability of persons intending to wound one person, and accidentally wounding another.

Procedure in sessions courts in such cases;

3864. In trials referred under the preceding section to the nizamat adawlut, the law officers of that court are also to declare in their futwa to what punishment the prisoner would have been liable, if the act of which he is convicted had been committed as intended by him; and the court after considering such futwa, with the whole of the proceedings in the case, are to pass such sentence on the prisoner, short of death, as they judge adequate to his offence. *Beng. and Ben. Reg.* VIII. 1801, sect. 5. *Ced. Prov. Reg.* VIII. 1803, sect. 10, cl. 5.

and in the nizamat adawlut.

Commitment in case of wounding with intent to murder.

3865. In all cases of wounding, manifesting a deliberate intention to commit murder, it is the duty of the magistrate to commit the prisoner to be tried on that specific charge. Reg. XII. 1829, sect. 2, cl. 1.

Futwa in such case.

3866. In all trials for the specific offence described in the foregoing clause, the law officer sitting on the trial is to declare whether the intention to commit murder be established. Reg. XII. 1829, sect. 2, cl. 2.

Sentence in such case.

3867. If the law officer finds the intent to commit murder, and the judge holding the trial concurs therein, it is competent to him to pass such sentence of imprisonment as he deems adequate to the crime, not exceeding the period of fourteen years' imprisonment. Reg. XII. 1829, sect. 2, cl. 3.

If judge dissents from law officer in regard to intent to murder, he may refer.

3868. In any case in which a session judge dissents from the futwa of the law officer, regarding the intent to commit murder, it is competent to the judge to make a reference to the nizamut adawlut, as under the like circumstances he is in all other cases authorized by the general regulations. Reg. XII. 1829, sect. 3.

So, if he considers the sentence within his competence inadequate.

3869. Under sect. 6, Act XXXI. 1841, the session judge can refer to the nizamut adawlut any case, in which he considers the sentence, which he is empowered to pass, inadequate to the guilt of the prisoner. Reports *L. P.* 1854, part 1, page 111. This over-rules the precedent in *N. A. R.* vol. 5, page 176.

Sentence to be passed in cases of wounding under futwa of hukoomut-i-udl.

3870. In many cases of corporal injury, extending even to *mayhem*, the law officers on the full conviction of the prisoners declared them liable to *hukoomut-i-udl* only, or a just award, which is construed by them to mean payment by the prisoner of the expenses incurred for medicines and medical attendance by the party injured. (a) Such reparation being considered wholly inadequate, it is hereby enacted that the session judge is, under such futwa, competent to pass sentence of imprisonment for any period not exceeding seven years, with power to refer the record to the nizamut adawlut in any case, in which they deem that punishment inadequate; and on receipt thereof, the nizamut adawlut, after requiring a further futwa from their law officers, are to pass sentence of imprisonment for such limited period of time, as under all the circumstances of the case is equitable and just. Reg. IV. 1822, sect. 6.

which sentence may include corporal punishment.

3871. In a case in which certain convicts under sentence of perpetual imprisonment were found guilty of assaulting and cutting off the nose of the bukshee of the jail, and were declared by the law officer liable to tazeer as well as hukoomut-i-udl, it was held that the above provision does not preclude the judge from awarding corporal punishment under cl. 7, sect. 2, Reg. LIII. 1803.* *N. A. R.* vol. 2, page 362.

* *v. para.* 1311.

If the act of the accused is held to be justifiable, he

3872. In a case of severe wounding, in which the judge virtually agreed with the law officer in considering the act of the prisoner justifiable, the court held that he should have

(a) This is exactly in accordance with the Mosaic law:—"And if men strive together, and one smite another with a stone, or with his fist, and he die not, but keepeth his bed: if he rise again, and walk abroad upon his staff, then shall he that smote him be quit: only he shall pay for the loss of his time, and shall cause him to be thoroughly healed." *Exodus Chap. XXI. v. 18 and 19.*

released him in accordance with the concluding words of cl. 1, sect. 9, Reg. IX. 1807; which authorizes a magistrate to release the accused, if the homicide in which he appears to have been concerned, is clearly shown, from the whole of the evidence, to have been accidental or justifiable under the Mahomedan law and the regulations. Reports *L. P.* vol. 4, part 1, page 164. should be released.

3873. The castration of any person, whether a slave or otherwise, is held criminal and punishable by the Mahomedan law, particularly if the offender is proved to have made it his professional or frequent practice; nor is the consent of the party allowed to obviate the punishment, which, in all cases, is left to the discretion of the governor of the country, or his representative, and to be proportioned to the magnitude of the offence. Such cases are to be treated as other heinous offences. C. O. Nos. 4 and 192 of vol. 1. Castration is punishable though effected with the consent of the person injured.

3874. Magistrates are to report to the superintendent of police all cases in which the practice of swinging at the charak pooja is attended with cruelty, or enforced without the free consent of the parties submitting to it. C. O. Sup. Pol. *L. P.* No. 8 of 1853. Charak pooja.

3875. The prisoners, having been charged with murder, were convicted of homicide in heat of blood in sudden affray, and sentenced under circumstances of aggravation (three men assaulting one, and beating him when he had been felled to the ground) to imprisonment for 3 years. N. A. R. vol. 1, page 111. Assault attended with homicide and beating; sentence:—three persons to imprisonment for 10 years with labor, and another for 7 years with labor. N. A. R. vol. 2, page 323. Certain Mussulman prisoners convicted of a violent assault on a Hindoo zumeendar and his dependants, attended with arson and homicide, were sentenced to imprisonment with labor in irons for 14 years. N. A. R. vol. 5, page 83. On a charge of murder, the prisoners were convicted of a culpable assault on the deceased, in attempting to press him as a begar, in consequence of which he was accidentally drowned; sentence:—one to 25 stripes and 3 years' imprisonment, and the other to 25 stripes and 2 years' imprisonment. N. A. R. vol. 1, page 142. Two prisoners, charged with highway robbery, were convicted of assault and taking property under color of being custom-house officers, and sentenced to 20 stripes and 3 years' imprisonment with labor. N. A. R. vol. 1, page 315. A prisoner convicted of an outrageous assault, and of having violently entered the prosecutor's house and pursued and insulted his wife, was sentenced to imprisonment with labor for 7 years. N. A. R. vol. 2, page 333. A prisoner was convicted of beating the prosecutor with a large stick, and thereby breaking his arm; but he was discharged without further punishment in consequence of the imprisonment he had already undergone. N. A. R. vol. 3, page 309. **Precedents.**
Assaults.
Attended with homicide;

with arson and homicide;

with accidental drowning;

with forcibly seizing property under false pretences;

with forcible entry;

with bone-fracture.

3876. Assault by a convict under sentence upon the magistrate, while in the execution of his duty; sentence:—15 stripes and 7 years' imprisonment with irons and handcuffs in addition to former sentence. N. A. R. vol. 1, page 329. A sepoy on guard was convicted of an attempt to assassinate the magistrate in the execution of his duty, from motives unknown, by presenting a musket at his body, and on its missing fire attempting to draw his sword for the same purpose; sentence:—imprisonment for life in the Alipore jail. N. A. R. vol. 2, page 357. A person was convicted of attempting to stab the magistrate while By a convict on the magistrate.

By a sepoy on the magistrate with attempt to assassinate.

Attempt to stab a magistrate by a

person bearing arms in opposition to the magistrate's order, such order being in itself illegal.

in the execution of his duty. The prisoner was carrying arms during the mohurrum in opposition to an order of the magistrate, by whom he was required to give them up; on his refusal some peons endeavoured to disarm him, and the consequence was his attempt to stab the magistrate. The judge referred the case to the nizamut adawlut; but the court held that

* *v. para.* 3869.

he was bound to pass sentence as the case was within his competence,* and returned the proceedings. The prisoner was then sentenced by the judge to 5 years' imprisonment with hard labor; and the nizamut adawlut confirmed the sentence, directing at the same time that the practice of depriving individuals of their weapons, being illegal, should be discontinued except in cases where there is reasonable ground to apprehend danger of a breach of the peace from their being carried by their owners. N. A. R. vol. 3, page 196. Four persons were convicted of violently assaulting a moonsiff, while in the execution of his duty, and resisting and destroying the process of the civil court. They were sentenced, one to imprisonment without labor and irons in the civil jail for 1 year, and a fine of 1000 rupees or further imprisonment for 1 year; two to the same imprisonment for 1 year and a fine of 200 rupees; and the fourth to imprisonment with hard labor for 18 months. N. A. R. vol. 2, page 304.

Assault on a moonsiff, with resistance of process.

Assault by a burkundaz upon the darogah.

A police burkundaz, in a quarrel with the darogah, fetched his blunderbuss (not proved to be loaded), and threatened to shoot him. The court, deeming him guilty of violent and insubordinate behaviour to his superior officer, and not being satisfied that his intent was murderous, sentenced him to be imprisoned without labor and irons for 6 months. N. A. R. vol. 2, page 402.

By police officers upon an old man.

3877. A police darogah convicted of having ordered one of his inferior officers to beat the deceased, an old man aged 70 years, was acquitted of murder, as there was no proof that the beating occasioned the death; but was sentenced to one year's imprisonment, and dismissal from office. N. A. R. vol. 1, page 341.

Case of acquittal from insufficiency of evidence.

3878. Two prisoners were convicted and sentenced by the commissioner to 5 years imprisonment for an aggravated assault, attended with wounding, plundering, and abduction; but were acquitted by the nizamut adawlut on a revision of the proceedings; the court with reference to the improbable nature of the charge, and the discrepancies in the depositions of some of the witnesses, deeming the evidence insufficient for conviction. N. A. R. vol. 4, page 41.

Maiming.
Castration.

3879. A prisoner convicted of castrating a boy with his consent, from which operation death ensued, was sentenced under all the circumstances of the case (the youth and ignorance of the prisoner, the absence of all malice, the express desire of the deceased, and the fact that such operation was not unusual among hermaphrodites) to imprisonment for 2 years. N. A. R. vol. 3, page 17.

Cutting off wife's nose.

3880. The prosecutrix entered into a written agreement with her husband, the prisoner No. 1, authorizing him to cut off her nose, or otherwise maim her, in the event of her acting improperly. Detecting her in adulterous intercourse, he cut off her nose; and being prosecuted by her, he was convicted of that offence, and sentenced to imprisonment for 5 years: and No. 2, of aiding and abetting in that offence, to imprisonment for 3 years.

Cutting off the noses of uncle's

N. A. R. vol. 1, page 296. A prisoner, convicted of cutting off the noses of his uncle's

widow and her paramour, pleaded the criminal intercourse of the parties as a justification; but the law officers rejected this plea on the ground that he did not stand to his uncle's widow in the relation of a mohrim, *i. e.* one to whom it is permitted to enter the haram. The act was premeditated and deliberately executed; and the prisoner was sentenced to imprisonment and hard labor in banishment for 7 years. N. A. R. vol. 1, page 327.

widow and her paramour.

3881. A prisoner was tried for cutting off the ear of a man who had burglariously entered his house during the night, and was acquitted as no guilt was considered to attach to the act. N. A. R. vol. 3, page 285.

Cutting off the ear of a thief.

3882. A prisoner was convicted of cutting off his wife's hand; but no punishment was awarded in consequence of the prayer of the injured party that her husband should be released. N. A. R. vol. 1, page 344.

Mutilation of wife; punishment remitted at her request.

3883. A girl, 12 years old, was accused of cutting off the membrum virile of her husband. There was no doubt of her guilt; but the husband filed a razeenamahi absolutely renouncing all claims upon the prisoner; and the law officers declared her not liable to any punishment both on account of her non-age, and because, as the act constituted a private not a public wrong, and as the individual injured relinquished his claim, the public prosecutor had none whatever. The court did not concur in the futwa, but judged themselves incompetent under the existing law to punish, and therefore released the prisoner.(a) N. A. R. vol. 2, page 29.

Mutilation of husband; no punishment inflicted from defect in the law.

3884. A prisoner convicted of wounding the prosecutor's child with intent to murder, and of robbing it of its ornaments, was sentenced to imprisonment for life. N. A. R. vol. 3, page 195. In a similar case in which the prisoner was guilty of atrocious cruelty, he was sentenced to 39 stripes and imprisonment in transportation for life. N. A. R. vol. 1, page 332.

Wounding.
WITH INTENT TO KILL,
in prosecution of theft;

3885. The prisoner overheard his wife making an assignation with the prosecutor, and lay in wait for them; and as he found them in the act of adultery, cut at them with his sword with intent to kill both; but they effected their escape without being severely wounded. The law officers declared him entitled to his release. The commissioner considered that the lying in wait with a murderous intent deprived the prisoner of that degree of excuse which warranted acquittal; but the nizamat adawlut, agreeing with the law officers, directed his immediate discharge. N. A. R. vol. 4, page 98. A prisoner convicted of wounding his wife with intent to kill, in consequence of her persisting in an adulterous intercourse with another man, was sentenced to imprisonment with labor for 5 years. N. A. R. vol. 2, page 421.

on account of wife's adultery;

3886. A prisoner, convicted of wounding with intent to kill, from motives of jealousy, by cutting the throat of a woman with whom he had cohabited, was sentenced to 14 years' imprisonment with labor. N. A. R. vol. 3, page 162. In a case of a prisoner committed for trial on a charge of "severely wounding," it was held that the commissioner was not com-

on account of jealousy,

(a) Such cases have since been provided for by section 3, Regulation IV. 1822. See para. 1530.

petent to convict and sentence him for the more serious offence of "wounding with intent to murder." It appeared that the jealousy of the prisoner was excited by observing the admission of another person to share in the favours of a woman with whom he cohabited: and that he therefore took an opportunity during the night of wounding them so severely that they narrowly escaped with their lives. Under these circumstances the court were of opinion that the prisoner should have been committed under sect. 2, Regulation XII. 1829, on the charge of wounding with intent to kill; and accordingly annulled the former commitment, and the proceedings on the trial, and directed him to be re-committed and put on his trial on that charge. He was accordingly re-tried, and sentenced by the commissioner to 14 years' imprisonment, under cl. 3, sect. 2, Reg. XII. 1829. The nizamat adawlut, deeming the prisoner convicted of a deliberate intent to commit murder, annulled the sentence as inadequate, and sentenced him to be imprisoned for life. N. A. R. vol. 4, page 59.

on suspicion; 3887. A prisoner was convicted of dangerously wounding his wife with intent to kill her. His own account was that he was actuated by motives of jealousy; but it was held that his suspicions, had there been any cause for them, could not have justified him in going armed and avenging himself in such manner. He was sentenced to 14 years' imprisonment in banishment with hard labor. N. A. R. vol. 2, page 211.

from revenge; 3888. A prisoner was convicted of wounding his infant daughter with intent to kill her, and throwing her as dead at the door of a person with whom he had quarrelled, under the notion that the guilt of her innocent blood would lie on the head of his enemy; sentence:—imprisonment for 7 years. N. A. R. vol. 1, page 340. A prisoner was convicted of wounding with intent to kill; but acquitted of the murder of the deceased person, in consequence of a doubt whether the wounding was the sole and immediate cause of the death, which under the Mahomedan law must be established in order to warrant kisas; sentence:—imprisonment for life. N. A. R. vol. 1, page 272. Prisoner convicted of wounding with intent to murder, the apparent motive being enmity against the wounded person, who had been appointed to check his expenditure, and had exercised a vigilant supervision over him; sentence:—imprisonment with hard labor for life in the Alipore jail. N. A. R. vol. 3, page 279.

in revenge for refusing to have criminal connection, 3889. A prisoner having been convicted by the commissioner of wounding with intent to kill his sister-in-law (for refusing to have connection with him), and sentenced to 14 years' imprisonment with labor, the nizamat adawlut, on a revision of the proceedings, deemed the sentence inadequate, and sentenced the prisoner to imprisonment for life. N. A. R. vol. 4, page 81. So, in another case of the same nature, where the commissioner passed sentence of imprisonment with labor for 7 years, the nizamat adawlut commuted it to imprisonment for life in the Alipore jail. N. A. R. vol. 4, page 175.

in a quarrel; 3890. A prisoner was convicted of wounding his wife with intent to kill, being incensed at her on some account which did not clearly appear. Though little injury resulted from the wounds, he was sentenced to 14 years' imprisonment with hard labor. N. A. R. vol. 2, page 207. A prisoner was convicted of wounding his wife in consequence of a quarrel with her; and the sentence passed on him by the session judge was enhanced from 2

to 7 years' imprisonment with labor in irons (a) He would have been convicted of wounding with intent to kill, had not the session judge omitted to state to him that part of the charge which denoted the aggravating circumstances of his crime. N. A. R. vol. 5, page 162.

3891. Prisoner convicted of wounding with intent to kill, the motive unknown; sentence:—imprisonment with labor for 10 years. N. A. R. vol. 2, page 269. In a similar case, the sentence was imprisonment for 10 years with hard labor in banishment. N. A. R. vol. 3, page 17. from motives unknown;

3892. A prisoner, convicted of severely wounding the prosecutor with a sword in revenge, was sentenced under sect. 4, Reg. XVII. 1817, in opposition to the futwa which acquitted on the ground of there being but one eye-witness besides the prosecutor, to imprisonment with hard labor for 7 years. N. A. R. vol. 2, page 239. WITHOUT MURDEROUS INTENT, from revenge;

3893. A prisoner convicted of severely wounding a person, who he alleged had an improper intimacy with his wife, and also wounding slightly his wife's grandmother, the intent to kill not being proved, was sentenced to imprisonment with labor and irons for 7 years. N. A. R. vol. 6, page 188. from suspicion of dishonor.

3894. A prisoner, convicted of wounding his wife with a dao on slight provocation, was sentenced, notwithstanding the prosecutrix waived her claim and prayed for his release, to imprisonment for 5 years with hard labor. N. A. R. vol. 1, page 367. in a quarrel,

3895. A prisoner, convicted of severely wounding five persons with a sword and spear, was sentenced to imprisonment for life in consequence of the aggravated nature of the offence. In this case, two other persons were committed for trial for having deliberately cut off the hands of the prisoner, after he had perpetrated the above acts; but it appeared that they did so with a view to his apprehension and in self-defence; and the nizamat adawlut, considering their conduct meritorious, and not such as to have warranted their being committed for trial, ordered their immediate release and rewarded them with 50 rupees each. N. A. R. vol. 1, page 310. A prisoner convicted of enticing a woman into a jungle, and leaving her there after so severely wounding her as to deprive her of sense, from some motive not ascertained, was sentenced to imprisonment with labor and irons for 10 years. N. A. R. vol. 6, page 198. from motives unknown,

3896. The prisoner having wounded the prosecutors, who entered his house and attempted to seize him without a legal process, was not sentenced to any punishment. N. A. R. vol. 2, page 407. in self-defence.

3897. A prisoner, convicted of blinding his wife with a hot iron on slight provocation, was sentenced to imprisonment with hard labor for 14 years. N. A. R. vol. 2, page 427. A prisoner convicted of atrocious cruelty towards a boy, in beating him, and thrusting a stick besmeared with chillies up his anus, thereby occasioning his death, was sentenced to **Maltreatment.**
Blinding.
Attended with homicide;

(a) The session judge was informed, that his sentence was illegal under section 3, Regulation II. 1834; as imprisonment for two years should be without irons and with labor commutable to a fine.

with torture and homicide ; imprisonment for life in the Alipore jail. N. A. R. vol. 3, page 97. In a case of gross maltreatment and torture (apparently to extort a confession of theft) which ended in the death of the person abused, the prisoners were convicted of aggravated culpable homicide, and sentenced, the principal to imprisonment for 14 years, three for 10, one for 7, and one for 2 years, with labor. N. A. R. vol. 2, page 378. A woman convicted of maltreatment of a female slave, was sentenced to imprisonment for 12 months ; and the slave, in consideration of the injurious treatment which she had experienced from her mistress, was declared free. N. A. R. vol. 1, page 55. A prisoner convicted of extorting confessions by violence was sentenced to imprisonment for 3 years with labor and irons. N. A. R. vol. 3, page 310.

By police officers. 3898. The prisoners, who were the darogah, mohurir, and burkundazes of a police thana, were convicted of gross maltreatment and torture to extort a confession on a false charge of dacoity ; and were sentenced, the darogah and mohurir for ordering and permitting the torture to 14 years' imprisonment without labor and irons ; two burkundazes for actually inflicting the torture to 14 years' imprisonment with labor and irons ; and one for being present aiding and not preventing it to imprisonment for 3 years without irons, and a fine of 50 rupees in lieu of labor. N. A. R. vol. 6, page 18. A police darogah was convicted of oppression and maltreatment of eighteen persons charged with dacoity, by confining them in a small room for four days ; and was sentenced to imprisonment in the civil jail for 6 months, and a fine of 200 rupees commutable to a further term of imprisonment for 6 months ; and measures were taken to prevent his future employment in the public service. N. A. R. vol. 5, page 75.

Mahomedan law.

Cases in which retaliation is incurred.

3899. Maiming and other injuries not affecting life entitle the party injured in certain cases to retaliation, in others to fine. The former is incurred only when strict equality can be maintained in effecting the retribution, and when the offence is wilful,—the intention being judged of by the circumstances exhibited in evidence without regard, as in cases of homicide, to the weapon or instrument used. In order to preserve the equality necessary to *kisas*, the condition of the person injured, and that of the person to be retaliated upon, must be the same ; and there must be a certainty that the consequences of the retaliation will not be more severe than those of the original injury. On these principles retaliation cannot be claimed, if one party be a man and the other a woman ; or one a slave, the other free ; or where both parties are the slaves of different persons and of different value ; nor is the right limb to be amputated for the left : nor a sound member for an unsound one ; nor are dismemberments to be made except at the joint, from the difficulty of maintaining equality, as well as the danger to life in enforcing it : for the same reason it is not allowed in cases of fracture or injury to the bones, excepting the teeth which may be extracted with safety. A difference of religion, however, does not bar the demand for retaliation ; as the Mussulman and infidel subject are considered to be on an equality with respect to personal protection, and the payment of fines.

Cases in which the injured party is entitled to pecu-

3900. Cases in which retaliation is not incurred subject the offender if the offence is wilful, or his *âkilah* if it is accidental, to the payment of *arish*, or the fine of blood in case

short of life; the amount of which, in some cases of severe injury, is specifically fixed, and where a sense has been destroyed is equal to diyut. In minor cases the amount of the fine is adjusted by supposing the wounded person a slave, and ascertaining his difference of value with or without the wound he has received.

niary compensa-
tion.

3901. Both *kisas* and *arish*, for personal injuries not affecting life, are open to composition between the parties; and the injured person may in either case remit the penalty. (a)

In both cases the
penalty may be
compounded or re-
mitted.

(a) Harington's Analysis, vol. 1, page 265. Hedaya, book 49, chap. 3.

NOTE.

The term assault is used in regulation law in the vulgar acceptance of the word rather than in the legal sense of the English code; the offences included in the latter under the heads assault and battery are designated by the former as assault and wounding. In English law,—an *assault* is an attempt or offer with force or violence to do a corporal hurt to another; and the act must be accompanied with such circumstances as denote at the time an intention, coupled with a present ability, of using actual violence against the person of another. If the defendant's demeanor naturally impressed the plaintiff with the idea that he was about to strike him, it is an assault, notwithstanding his real intention was to do him no harm. The injury need not be direct from the hand of the party; as there may be an assault by encouraging a dog to bite; so, by exposing a person to the inclemency of the weather; or by an unlawful imprisonment or detention of the person. Mere words however can never amount to an assault. So, if a man strike at another, but at such a distance that he cannot by possibility touch him, it is no assault: but if A advance in a threatening attitude towards B to strike him, and be stopped just before he is near enough for his blow to take effect, it is an assault. A *battery*, in the legal acceptance of the word, includes beating and wounding. To beat, also, in the legal acceptance of the term, means not merely to strike forcibly with the hand, or a stick, or the like, but includes every touching or laying hold (however trifling) of another's person or clothes in an angry, revengeful, rude, insolent or hostile manner: as, for instance, thrusting or pushing him in anger; holding him by the arm; spitting in his face; jostling him out of the way; pushing another man against him; striking a horse upon which he is riding, whereby he is thrown; or the like. If a man strike at another with a cane or fist, or throw a bottle at him, or the like, if he miss him, it is an *assault*; if he hit him, it is a *battery*. A *wounding* is where the violence is so great as to draw blood, by striking or stabbing him with a sword, knife, or other instrument, or by shooting, or by striking him with a cudgel, or fist, or the like; and includes incised wounds, punctured wounds, lacerated wounds, contused wounds, and gun-shot wounds. It is a good defence to prove that the alleged battery happened by misadventure (but this is subject to the general rule given in para. 86); or that it was an amicable contest, as in wrestling; or that it happened by accident whilst the defendant was engaged in some sport or game which was neither unlawful nor dangerous. So, it is a good defence, that the prosecutor assaulted or beat the defendant first, and that the defendant committed the alleged battery merely in his own defence; or in the defence of another person: but then it must be such only as was necessary for the defence, and not excessive, or by way of revenge after all danger from the assailment was passed: also, it is a sufficient answer to this defence, to prove that the first assault was justifiable. The defendant may justify a battery by proving that he committed it in defence of his possession; but then the force used must not be excessive, or more than was actually necessary. Lastly, it is a good defence to prove that the defendant, as an officer of justice, arrested the prosecutor by virtue of a certain process, which is the alleged battery complained of; but the officer cannot justify any actual force except in case of resistance attempt at rescue, and then no greater degree of force than was necessary to secure the prisoner. *Comyns, Russell, and Archbold*.

SECTION IV.

OF HOMICIDE AND MURDER.

When bodies are sent to civil surgeon, all information to be given.

3902. Magistrates, sending bodies to the civil surgeons for examination, are to furnish them with all available information regarding the alleged cause of death. C. O. No. 152 of vol. 3. In all cases where persons are known or suspected to have died from the effects of poison, the magistrate is to communicate to the civil surgeon, at the time of sending the body for examination, the name or any facts calculated to throw light on the nature of the poison, which is supposed to have been the cause of death. C. O. L. P. No. 3, April 25 1856, and *W. P.* No. 546, April 12, 1856.

Mode of proceeding in such trial in the sessions court.

* *r. pen a.* 1161.

If the law officer acquits.

If he convicts of wilful murder, whether he declares the prisoner liable to capital punishment or not, the trial is to be referred.

If the law officer convicts of homicide of any one of the four denominations distinguished in the Mahomedan law.

3903. In trials for murder before the sessions court, after the proceedings have been concluded in the prescribed manner,* the law officer of the court, who has been present during the trial, is to be required by the judge to declare whether the prisoner is convicted of the charge against him, and is to subscribe his answer on the record of the court's proceedings. If the law officer declares the prisoner to be not guilty, the judge is to pass an immediate sentence of acquittal, and to order him to be discharged; unless he sees cause to disapprove such opinion, in which case he is to refer the proceedings on the trial for the sentence of the *nizamut adawlut*. If the answer of the law officer declares the prisoner to be convicted of wilful murder (*katl-âmd*), the judge, without making any reference to the heir or heirs of the slain, is to require the law officer to declare the punishment to which the prisoner convicted would be liable according to the Mahomedan law, supposing all the heirs of the slain entitled to prosecute the prisoner for *kisas* to have attended and prosecuted him, at an age competent to demand *kisas*, and to have demanded *kisas*. The *futwa* of the law officer upon this reference is also to be subscribed on the record of the court's proceedings; and whether the *futwa* declare the prisoner liable to suffer death, as must be the case in most instances of conviction of wilful murder under the supposed demand of *kisas* by the heirs of the slain; or whether it declare the prisoner not liable to capital punishment from the heirs of the slain not being legally entitled to demand *kisas*, or the failure of retaliation from the parties standing in the relation of parent and child, or master and slave, or otherwise; the judge is in either case to refer the proceedings for the sentence of the *nizamut adawlut*. Should the answer of the law officer to the first reference acquit the prisoner of wilful murder, but convict him of homicide of any one of the four denominations distinguished in the Mahomedan law (*viz. shabah-âmd, katl-khata, katl-kaim-maham-ba-khata, and katl-ba-sabub*), the law officer is to declare the prescribed penalty for the same according to the Mahomedan law; and if his *futwa* should declare the *diyut* or price of blood to be the whole or part of the legal punishment, the sessions court is to commute the fine to imprisonment [*v. infra*]; and its sentences in such

instances, as in all others according to the existing regulations, are to be carried into execution without reference to the nizamat adawlut, if for temporary imprisonment; or referred to that court if for imprisonment for life; subject to the general provision* for referring to the nizamat adawlut all trials wherein the sessions courts disapprove of the futwas of their law officers. *Beng. and Ben. Reg. IV. 1797, sect. 3. Ced. Prov. Reg. VII. 1803, sect. 15, cl. 2.*

* v. para. 1286.

3904. Where a session judge, concurring with the assessors in a verdict of justifiable homicide, referred the trial to the nizamat adawlut, because he was in doubt whether the subsequent conduct of the prisoner, in making away with the body and denying that he had done so in the sessions court, did not render him amenable to justice for the concealment of the homicide;—it was held that this, besides that it had formed no portion of the charge, was not a sufficient ground for reference; and the case was returned to the judge to pass his own order on it. *N. A. R. vol. 6, page 78.*

In a case of justifiable homicide, it is no ground of reference that the prisoner secretly made away with the body.

3905. On a conviction of murder the session judge must refer the case to the sudder court, whether the principal be on trial or not, as to all the participes criminis. *Reports L. P. 1854, part 2, page 725.*

Trial must be referred as to any of the participes criminis.

3906. In the report of a trial for murder the nizamat adawlut observed that the judge had convicted the prisoners of privy to murder, whereas the confessions in the foudaree proved them to have been accessaries after the fact. The court held that the former offence was punishable by the magistrate; and that the latter took the case out of the judge's jurisdiction. And as the judge reported facts, which established an offence beyond his power to decide finally, the sentence was quashed and he was directed to refer the trial. *Reports L. P. 1855, part 2, page 529.*

Judge cannot sentence accessary after murder; but magistrate may punish for privy.

3907. A doubt having been entertained whether the above provisions relative to culpable homicide, not amounting to wilful murder, empower the sessions courts to commute the diyut, or fine of blood, prescribed by the Mahomedan law in such cases, to any period of temporary imprisonment, or whether the discretion of such courts, in the cases referred to, is limited by the general rule contained in cl. 7, sect. 2, Reg. LIII. 1803, which restricts the sessions courts, in cases not specially provided for, from passing a final sentence exceeding corporal punishment and imprisonment with hard labor for the term of seven years:—it is hereby explained that the above restriction is applicable to all cases of commutation for diyut on a conviction before a sessions court of culpable homicide, not amounting to wilful murder, under the above provisions, or any other regulation in force. If in any instance the above stated punishment appears insufficient, the judge is to refer the trial to the nizamat adawlut. *Reg. XVII. 1817, sect. 7.*

The punishment of diyut is commutable by the sessions courts to imprisonment with hard labor for any term not exceeding seven years;

3908. The above provision does not authorize the infliction of corporal punishment in cases of culpable homicide [consequently no additional period of imprisonment can be given in lieu thereof under sect. 2, Reg. II. 1834]. *C. O. No. 293 of vol. 1. Const. No. 352.*

but corporal punishment cannot be adjudged in such cases.

3909. In trials for murder in the sessions courts, an additional question is to be put to the law officer, whether the crime of wilful murder is proved against the prisoner or

Rule for taking the futwa of the law officer.

prisoners or any of them; and the law officer is to subscribe a distinct concise answer, that it is proved or that it is not proved; after which he is to be called on for his general futwa in the case. C. O. No. 228 of vol. 1.

How the law of-
ficers of the niza-
mut adawlut are to
deliver their futwa.

* For cases in
which futwa is not
required, see para.
1430.

The nizamut a-
dawlut are to call
for further evi-
dence, or to pass
final sentence.

How far the Ma-
homedan law is to
be adhered to.

† v. para. 1437.

A second futwa
unnecessary if first
futwa convicts on
violent presump-
tion.

The intention of
the criminal, and
not the manner or
instrument of per-
petration (except
as evidence of the
intent) is to be the
rule for determin-
ing the punish-
ment.

Wilful homicide
by poison or by
drowning is inclu-
ded in the above
rule.

‡ v. para. 1457.

Homicide in re-
sistance of legal
authority is mur-
der.

3910. In all cases referred under the above provisions to the nizamut adawlut, the law officers of that court, provided they are of opinion that the prisoner is duly convicted of murder, are to write their futwa* upon the case referred to the law officer of the sessions court; assuming always that all the heirs of the slain entitled to prosecute for kisas attended and prosecuted, at an age which rendered them competent to demand kisas, and that they demanded it. But if they are of opinion that the prisoner is not duly convicted of wilful murder, they are to state their reasons for such opinion; and whether they consider the prisoner altogether innocent, or convicted of homicide under any of the four denominations distinguished by the Mahomedan law, adding in the latter case the legal penalty to which the prisoner is liable: and the nizamut adawlut, after considering their futwa so given, with the whole of the proceedings on the case, are either to require further evidence, if they see occasion, or to pass such final sentence as appears consonant to justice, and conformable to the Mahomedan law with the exceptions and modifications authorized by the regulations. If, in any case not provided for by the regulations, the Mahomedan law appears to the court repugnant to natural justice, they are notwithstanding to adhere thereto, if in favor of the prisoner, in the case before them; or, if against the prisoner, to grant such remission or mitigation of punishment, as appears just and proper according to the circumstances of the case;† and at the same time to propose a new regulation to provide against a recurrence of the case. *Beng. and Ben. Reg. IV. 1797, sect. 4. Ced. Prov. Reg. VIII. 1803, sect. 11.*

3911. It is not necessary for the nizamut adawlut to call for a second futwa from its law officer in cases of murder, when the first futwa convicts of murder on grounds only of violent presumption (ghalib-oos-zana). Resolution N. A. February 27, 1852.

3912. In trials for murder, the law officers are to deliver their futwas according to the doctrines of Yoosuf and Mahomed. The distinctions, however, made by those Imams, and by Hunccefah, as to the mode of committing murder are not to be adhered to by the nizamut adawlut; but the intention of the criminal, either evidently or fairly inferrible from the nature and circumstances of the case, and not the manner or instrument of perpetration (except as evidence of the intent), is to constitute the rule for determining the punishment. It is further declared that wilful homicide by poison, or by drowning, when the intention of poisoning or drowning is evident, is included in the above rule; and that in all such cases the nizamut adawlut (whatever may be the futwa of their law officers) are to sentence the prisoner to suffer death, provided they judge him fully convicted of wilful murder, or unless they consider him a proper object for mercy.‡ *Beng. and Ben. Reg. IX. 1793, sect. 75; and Reg. VIII. 1799, sect. 5. Ced. Prov. Reg. VIII. 1803, sect. 10, cl. 1.*

3913. When an officer, engaged in the execution of civil process, is justified by his authority, and exercises that authority in a legal manner, if he be resisted, and in that resistance any one of his party is killed, the killing amounts to murder. Reports *W. P.* 1856, part 1, page 531.

3914. Whenever death is caused by violence without any obvious justifying or extenuating cause, the commitment should be for murder. It is left to the court trying the case to convict only of culpable homicide, if the facts be found to justify such a finding. Reports *L. P.* 1851, page 1743.

When death is caused by violence, the commitment should be for murder.

3915. Any person who is convicted of having deliberately and maliciously intended to murder one individual, and of having in the prosecution of such intention accidentally killed another individual, is on account of the murderous intention and actual homicide liable to the punishment of murder, in like manner as if he had killed the person intended to be murdered; any distinction in the Mahomedan law to the contrary notwithstanding. * In such cases the law officers of the sessions court, and of the nizamat adawlut (to which court all trials of this description are to be referred), are to be required to state what punishment the prisoner would have been liable to, if he had committed the murder intended by him; and if their futwa declares him in such case liable to suffer death, or if under the futwa so given, and the modifications of the Mahomedan law contained in the above provisions or any other regulation, the prisoner is liable to suffer death, the nizamat adawlut, provided it is established to their satisfaction that the prisoner intended to commit the crime of deliberate and malicious murder, and that the homicide charged against him was actually committed by him in the prosecution of such murderous intention, are to sentence the prisoner to suffer death, unless they consider him a proper object of mercy, and deserving of pardon or a mitigation of punishment.† *Beng. and Ben. Reg.* VIII. 1801, sect. 2. *Ced. Prov. Reg.* VIII. 1803, sect. 10, cl. 2.

Erroneous homicide.

(*) The term "erroneous homicide" is not to be used in commitments, as it does not show the degree of criminality. The main point which should be shown in the finding is whether the homicide was culpable or not culpable, which does not appear from the term erroneous. Reports *L. P.* 1851, page 1621.

† *v. para* 1157.

3916. The rule contained in the preceding clause is to be considered equally applicable to any other cases of homicide, which are declared by the law officers of the sessions court, or nizamat adawlut, to be within the Mahomedan law of *katl-khata*, *kutl-káim-nakám-ba-khúta*, or other legal denominations of accidental homicide; but in which the prisoner is clearly convicted of having committed the homicide proved against him with a murderous intention, such as if carried into effect would have subjected him to a sentence of death; or with a deliberate intention to commit any crime, which if committed in pursuance of the prisoner's criminal design would have rendered him liable to a sentence of death. *Beng. and Ben. Reg.* VIII. 1801, sect. 3. *Ced. Prov. Reg.* VIII. 1803, sect 10, cl. 3.

The foregoing rule is applicable to all cases of accidental homicide, wherein the criminal intention of the party, if carried into execution, would subject him to a sentence of death.

3917. Such part of sect. 3, Reg. IV. 1797 [para. 3903], as authorizes the sessions court, in cases of *katl-khata*, and other cases of accidental homicide, when the prisoner is declared liable to the *diyut*, or price of blood, to commute such price to imprisonment, is not to be considered applicable to any of the cases noticed in the two preceding paragraphs. A prisoner is not liable to suffer any imprisonment, or other punishment, in the cases of accidental homicide mentioned in the section above quoted, although the *diyut* is declared by the law officers to be payable under the Mahomedan law, if the homicide clearly appears to have been committed by misadventure in the prosecution of a lawful act and without any malignant intention. *Beng. and Ben. Reg.* VIII. 1801, sect. 6. *Ced. Prov. Reg.* VIII. 1803, sect. 10, cl. 6.

The rule for commutation of *diyut* is not applicable to such cases.

Homicide by misadventure in the prosecution of a lawful act and without malignant intention subjects to no punishment.

3918. It cannot be held to be simple misadventure, if the accused person has shown a want of due caution, and a recklessness of consequences. Reports *L. P.* 1856, part 2, page 787.

Want of due caution.

The magistrate may release the accused in cases of accidental or justifiable homicide :

3919. The magistrate is authorized to release the accused, if the homicide, in which he appears to have been concerned, is clearly shown, from the whole of the evidence, to have been accidental, or justifiable under the Mahomedan law and the regulations. Reg. IX. 1807, sect. 9, cl. 1.

and should apply to the law officer, if in doubt as to the law.

3920. In such case, if the magistrate is doubtful as to the law, he should apply to the law officer for assistance. Const. No. 617.

If act be felonious, the homicide is murder.

3921. Prisoners having been engaged in the commission of a felonious act terminating in homicide, must be regarded as accomplices in the crime of wilful murder. Reports *L. P.* 1853, part 2, page 1500.

Cattle trespass.

3922. Under the Mahomedan law it is culpable homicide, if a person whose cattle are trespassing on the crops of another is killed by the owner of the crops. Reports *L. P.* 1852, part 1, page 683.

Where the wound, but for bad health, would not have proved fatal.

3923. Where the medical evidence showed that the deceased would not have necessarily died from the effects of the wound, had it not been for the bad state of his health, and where there was no proof of any intention to take life, the court held that the prisoner could not be convicted of wilful murder, but passed sentence for culpable homicide. Reports *L. P.* 1856, part 1, page 936. Reports *W. P.* 1856, part 1, page 404. See *para.* 3993.

Homicide of murderers, robbers, or thieves, in self-defence, or defence of property, is justifiable.

3924. Persons who wound or slay murderers, robbers, or thieves, in their own defence, or in defence of their property, are not to be proceeded against, or placed in restraint, or required to give bail, except under special orders of the magistrate; police officers are strictly prohibited from acting in violation of this rule, under penalty of dismissal from office. Reg. XX. 1817, sect. 25, cl. 10.

So, homicide of such persons by police officers, in certain cases.

3925. If any police officer, entrusted with or assisting in the execution of any legal warrant for the apprehension of a person charged with murder, robbery, or other heinous crime, or pursuing a robber or murderer immediately after the commission of the crime, or resisting him during his attempt to perpetrate the crime, wounds or slays the offender in endeavouring to apprehend him, such police officer is to be held guiltless of any criminal act. Reg. XX. 1817, sect. 26, cl. 14.

Regard is not to be had to the grounds of personal distinction and exception to the general rules of natural justice, held by the Mahomedan law.

3926. In every case of wilful murder, wherein the crime appears to the nizamut adawlut to have been fully established against the prisoner, but the futwa of the law officers of that court has declared the prisoner not liable under the Mahomedan law to suffer death by kisas, solely on the ground of the prisoner's being father or mother, grandfather or grandmother, or other ancestor of the slain, or of the heir of the slain, or one of the heirs of the slain being a child or grandchild or other descendant of the prisoner, or of the slain having been the slave of the prisoner, or of any other person, or a slave appropriated for the service of the public, or on any similar ground of personal distinction and exception from the general rules of natural justice; the nizamut adawlut (provided they see no alleviating circumstances in the case) are to sentence him to suffer death, as if the futwa of their law officers had declared him liable to kisas, or to suffer death by seasut, as authorized by the Mahomedan law in all cases of wilful murder, under the discretion vested

in the magistrate with regard to this principle of punishment for the ends of public justice. *Beng. and Ben. Reg. VIII. 1799, sect. 2. Ced. Prov. Reg. VIII. 1803, sect. 15.*

3927. It does not justify any prisoner convicted of wilful homicide, that he or she was desired by the party slain to put him or her to death; and in the event of the prisoner being convicted of the fact to the satisfaction of the nizamut adawlut, and of their seeing no alleviating circumstances in the case, they are to sentence him or her to suffer death, whatever may be the futwa of their law officers under the Mahomedan law; which in this instance also, although it withholds kisas, gives a full latitude to the magistrate in the discretionary punishment of tazeer or seasut. *Beng. and Ben. Reg. VIII. 1799, sect. 3. Ced. Prov. Reg. VIII. 1803, sect. 16.*

The desire of the party slain to be put to death is no justification of wilful homicide.

3928. A Hindoo is liable to punishment for aiding and abetting in the suicide of a leper. *Const. No. 985.*

c. g. assisting in the suicide of a leper.

3929. Persons convicted of attempt at suicide are liable to discretionary punishment by the magistrate as well as by the session judge to the extent of their respective powers. *Reports L. P. 1853, part 1, page 842.*

Attempt at suicide punishable by magistrate.

3930. By the Mahomedan law, homicide by duelling, though wilful, being authorized by mutual consent, does not subject the person committing it to the penalty of wilful murder. But provision is made for such cases, when the prisoner appears deserving of punishment, by the above rule. In the case of a fatal duel, the magistrate may commit all parties to take their trial for murder; and, to authorize the commitment, it is not necessary that a complaint should be made by a private prosecutor. In this case no punishment was awarded in addition to the imprisonment which the accused had suffered before they were brought to trial, as it appeared that the surviving principal had received gross insults from the deceased, and that the seconds had used every endeavour to effect an accommodation. *N. A. R. vol. 1, page 277.*

Duelling.

3931. It having been found, that in certain cases of murder the justificatory plea, that the person murdered was the mistress or relation of the prisoner, and detected in criminal intercourse with another man, or that the murdered man was found in criminal intercourse with the prisoner's mistress or relation, or generally speaking detected in fornication, has been upheld by the law officers in bar of capital or discretionary punishment, and has been declared to subject such prisoner to diyut only,—it is hereby enacted, that the law officers of the nizamut adawlut are to be called on to declare in such cases what the futwa would have been, if such plea had not existed; and the judge or judges sitting on the trial are to pass sentence under the general regulations and on consideration of all the circumstances of the case, the same as if no such plea had existed. *Reg. IV. 1822, sect. 5.*

Regard is not to be had to the justificatory plea of fornication on the part of or with the mistress or relation of the accused.

3932. If the futwa of the law officers of the nizamut adawlut declare any person convicted of wilful murder not liable to suffer death, under the Mahomedan law, on the ground of one or more of his accomplices being exempted from kisas, under any of the circumstances recited above or on any similar ground of exemption; the nizamut adawlut are, notwithstanding such futwa, to sentence the prisoner to suffer death, if in their

Cases in which persons convicted of wilful murder are declared by the futwa not liable to suffer death on the ground of their accomplices being exempted from kisas.

Accomplices, not the principal perpetrators, are liable to suffer death.

judgment he is fully convicted, and there appear no alleviating circumstances in the case. And wherever the accomplice in a wilful murder, though not the principal perpetrator of the murder, appears to the nizamat adawlut fully convicted and deserving of death, they are authorized, under the discretion given by the Mahomedan law in such cases, to sentence the prisoner to suffer death; whether the futwa of their law officers declare the same or otherwise. *Beng. and Ben. Reg. VIII. 1799, sect. 4. Ced. Prov. Reg. VIII. 1803, sect. 17.*

Administering poison with intent to murder, death not ensuing.

3933. No specific punishment has been prescribed by any regulation in force for the simple offence of administering poison with intent to murder, death not ensuing, the provisions of cl. 4, sect. 8, Reg. XVII. 1817 referring solely to the administering poison with intent to murder when accompanied by robbery, burglary, or theft, or attempt to commit the same. The first mentioned crime comes therefore under the general rule laid down in cl. 7, sect. 2, Reg. LIII. 1803, by which sessions courts are empowered to pass sentence not exceeding 7 years' imprisonment; [and to refer the trial to the nizamat adawlut, if in any instance, they consider such degree of punishment insufficient].* *Const. No. 755.*

* *v. paras. 1285 and 1311.*

Special cases.

Punishment of persons putting others to death on the ground of sorcery

Persons holding an assembly for the trial of any charge, and putting persons to death, are guilty of murder.

3934. If any person or persons of the sutar caste, or of any other caste or persuasion within the British territories, puts any person to death on the ground of his or her being versed in or practising sorcery, such person or persons, on being convicted of the crime, are to be held guilty of murder, and are invariably to be punished accordingly: and if any persons actually form themselves into an assembly for the purpose of trying any man or woman on a charge of witchcraft, or any other charge, or cause such assemblies to be held; and any person or persons are in consequence put to death; they are to be considered to be principals or accomplices in the murder, and are to be dealt with accordingly. *Beng. and Ben. Reg. IV. 1797, sect. 6. Ced. Prov. Reg. VII. 1803, sect. 34.*

Persons sacrificing infants, or persons not arrived at the age of maturity, by throwing them into the sea, or river, are to be held guilty of wilful murder, and are to be liable to sentence of death.

3935. A criminal and inhuman practice of sacrificing children, by exposing them to be drowned, or to be devoured by sharks, prevailed at the island of Saugor, and Bansbaria, Chogda, and other places on the Ganges. At Saugor especially such sacrifices were made at fixed periods, namely, the day of full moon in November and in January, at which time also grown persons devoted themselves to a similar death. Children, thrown into the sea at Saugor, were not generally rescued, as was the custom at other places; but the sacrifice was on the contrary completely effected with circumstances of peculiar atrocity in some instances. This practice, represented to arise from superstitious vows, was not sanctioned by the Hindoo law, nor countenanced by the religious orders or by the people at large, nor was it at any time authorized by the Hindoo or Mahomedan governments of India. The persons concerned in the perpetration of such crimes would therefore be clearly liable to punishment; and the plea of custom would be inadmissible in excuse of the offence; but for the more effectual prevention of so inhuman a practice, the following provisions were enacted:—If any person or persons wilfully, and with the intention of taking away life, throw or cause to be thrown into the sea, or into the Ganges, or into any other river or water, any infant, or person not arrived at the age of maturity, with or without his or her consent, in consequence whereof such person so thrown into the water

is drowned, or is destroyed by sharks or by alligators, or otherwise perishes; the person or persons so offending are to be held guilty of wilful murder, and on conviction are to be liable to the punishment of death; and all persons, aiding or abetting the commission of such act, are to be deemed accomplices in the murder, and are to be subject to punishment accordingly. The trials of prisoners convicted, as principals or accomplices, of the crimes specified in this section, are to be referred to the nizamat adawlut who are to pass sentence thereupon according to sect. 75, Reg. IX. 1793,* whatever may be the futwa of the law officers of that court; or to grant such remission or mitigation of punishment, as appears just and proper according to the circumstances of the case.† *Beng. and Ben. Reg. VI. 1802*, sects. 1 and 2.

* v. para. 3912.

† v. para. 1157.

3936. If a child, or any person not arrived at maturity, is thrown into water, as stated in the preceding section, and is rescued from destruction, or by any means escapes from it, the persons who have been active in exposing him or her to danger of life, and all aiders and abettors of such act, are to be held guilty of a high misdemeanor; and on conviction are to be liable to such punishment as the sessions courts, under the futwas of their law officers, judge adequate to the nature and circumstances of the case. *Beng. and Ben. Reg. VI. 1802*, sect. 3.

If the infant, or other person, is rescued, the criminals are to be held guilty of a high misdemeanor.

3937. The magistrates of districts, wherein the sacrifice of children has been practised, are required to be vigilant to prevent the continuance of the practice; and are to cause the provisions of this regulation to be from time to time proclaimed at the places, and in the season, where, and when, such sacrifices have been effected. *Beng. and Ben. Reg. VI. 1802*, sect. 4.

Magistrates to be vigilant to prevent these practices.

3938. The magistrates were required to issue a proclamation throughout their respective jurisdictions, prohibiting the inhuman practice, then prevalent among the tribe of rajkumars, of causing their female infants to be starved to death: and declaring that if any rajkumar, after the publication of the proclamation, should designedly prove the cause of the death of his female child, by prohibiting its receiving nourishment, or in any other manner, such rajkumar should be liable to be tried as for murder. In such cases, the magistrate, on receiving information thereof upon oath, or such other information or proof as he deems sufficient to render the charge highly probable, is to cause such rajkumar to be apprehended; when, if it appears to the magistrate that the crime has been actually committed, and that there are grounds for suspecting‡ the prisoners to have been concerned in the perpetration of it, the magistrate is to cause him to be committed to prison to be tried before the sessions court; and is at the same time to take all other precautions, as usual, for securing the attendance of the original complainant or informant and of the witnesses; and the prisoner is to be tried as in other cases of murder. *Ben. Reg. XXI. 1795*, sect. 13. *Ced. Prov. Reg. III. 1804*, sect. 11.

Punishment of rajkumars causing their female infants to be starved to death.

‡ v. para. 979.

3939. Several instances having occurred in which persons were convicted of putting their children to death from an impulse of passion, with the intention of revenging themselves for a real or supposed insult or injury, offered to them by another person, under an idea that the guilt of shedding the blood of the innocent victim would lie on the head of the

Punishment of persons putting their children to death in revenge for some insult or injury offered to

them by another person.

person offering such insult or injury; proclamation was made, throughout the ceded provinces, declaring that any person who should be capitally convicted of putting to death his or her child or children, or of putting to death any other child or person, in consequence of a real or supposed insult or injury, would be invariably punished with death according to the provisions of the laws and regulations in the case. C. O. Nos. 42 and 55 of vol. 1.

Neglect of child, causing its death, subjects to diyut.

3940. The death of a child occasioned by the negligence of the person in charge of it, subjects such person to the payment of diyut, as incurred by the commission of kátl-káim-makám-ba-khatá, or homicide by misadventure. N. A. R. vol. 1, page 382.

Brahmins.

Reasons for the enactment of the following rules.

3941. The reverence paid by the Hindoos to brahmins, and the reputed inviolability of their persons, and the loss of or prejudice to caste that ensues from proving the cause of their death, have in some places in the province of Benares been converted by some of the more unlearned part of them into the means of setting the laws at defiance, from the dread and apprehensions of the persons of the Hindoo religion, to whose lot it must frequently fall to be employed in enforcing against such brahmins any process or demands on the part of government. The devices, occasionally put in practice under such circumstances by these brahmins, are lacerating their own bodies either more or less slightly with knives or razors; threatening to swallow, or sometimes actually swallowing poison, or some powder which they declare to be such; or constructing a circular enclosure called a kurh, in which they raise a pile of wood or of other combustibles, and betaking themselves to fasting, real or pretended, place within the area of the kurh an old woman, with a view to sacrifice her by setting fire to the kurh on the approach of any person to serve them with any process, or to exercise coercion over them on the part of government or its delegates. These brahmins likewise, in the event of their not obtaining relief within a given time for any loss or disappointment that they may have justly or unjustly experienced, occasionally bring out their women or children, and causing them to sit down in the view of the peon who is coming towards them on the part of government or its delegates, they brandish their swords, and threaten to behead or otherwise slay these females or children on the nearer approach of the peon; and there are instances, in which, from resentment at being subjected to arrest or coercion or other molestation, they have actually not only inflicted wounds on their own bodies, but put to death with their swords the females of their families, or their own female infants, or some aged female procured for the occasion. Nor are the women always unwilling victims; on the contrary, from the prejudices in which they are brought up, it is supposed that in general they consider it incumbent on them to acquiesce cheerfully in this species of self-devotement, either from motives of mistaken honor, or of resentment and revenge, believing that after death they shall become the tormentors of those who are the occasion of their being sacrificed.—In order to put a stop to these abuses, it is enacted, that upon information in writing being preferred to the magistrate against any brahmin or brahmins, for establishing a kurh, or for being prepared to maim, wound, or slaughter his women or children, or any or either of them, in the manner described above, or in any manner substantially similar thereto, on account of any subject of discontent, or any other account whatsoever; in such case, upon oath being

If a brahmin establish a kurh, or make preparations to maim, wound, or slaughter his women, or children, a written notice is to be served on him by means of his relations, or by a

made to the truth of the information, the magistrate is immediately to address to the said brahmin or brahmins a written notice in the vernacular, and under his official seal, which notice is to be served on him or them by such of their relations, friends, or connections, as the magistrate may think fit, and have an opportunity of employing for the purpose; and in default of such relations, friends, or connexions of the said brahmin or brahmins, the magistrate is to cause the notice to be served by a single peon of the same religion; and the notice is to require the said brahmin or brahmins to remove the kurh and the women and people that may be placed in it; or to desist from any preparation towards wounding or slaughtering the women or children, according as either or both of these facts are charged in the information. The notice is also to contain a positive and encouraging assurance to the brahmin or brahmins in question, that on his or their complying with the principal exigence thereof, by removing the kurh and the person or persons therein, or by desisting from any preparation to wound or slaughter the women and children, and thereon repairing (as they may think fit) in person or by vakeel to the civil court, proper enquiry shall be made concerning the dispute that may have given occasion to the act or acts thus prohibited. But if the issuing of the notice has not the effect of inducing the said brahmin or brahmins to comply with the exigence thereof, a written return to that purpose is to be made and attested by the party or parties entrusted with the serving of it; and the magistrate is thereon to issue a warrant under his official seal and signature for the apprehension of the said brahmin or brahmins, specifying the misdemeanor and contumacy with which he or they stand charged; and the execution of the warrant is to be committed to peons of the Mahomedan religion, nor is any Hindoo to be sent on such duty. On the brahmin or brahmins against whom the warrant has been issued being brought before the magistrate, he or they are to be dealt with in the mode prescribed by section 5, Regulation IX. 1793*, respecting persons charged with crimes or misdemeanors; and if it appears to the magistrate on the previous enquiry, which by the said section he is himself directed to make, that the misdemeanor or misdemeanors charged (that is, the constructing of the kurh, or being prepared to wound or slay the women or children, according as either or both of these acts have been charged) were actually committed, and that there are grounds for suspecting† the prisoner or the prisoners respectively to have been concerned, either as a principal or an accomplice, in the perpetration of either or both of these acts; the magistrate is to cause him or them to be committed to prison or held to bail (according as the parties appear to have been principals or accomplices) to take his or their trial at the sessions, and is to bind over the informant or complainant and the witnesses to appear at the trial, in the manner prescribed in the aforesaid section. *Ben. Reg. XXI. 1795, sects. 1 and 2.*

3942. The sessions court is to conduct the trial of the brahmin or brahmins charged with the above offences in the manner prescribed in the regulations in respect to other offences; but, as the Mahomedan law cannot adequately apply to offences of this local nature, it is therefore provided and ordered, that where, in the opinion of the session judge, the charge of being a principal in respect to the constructing of a kurh, or to the having been prepared to wound or slay the women or children, is proved, the said judge is to sentence the prisoner to the payment of a fine equal to the amount of his annual income

single peon of the same religion.

If such notice has not the desired effect, a warrant is to be issued for their apprehension by means of Mussulman peons.

Magistrate how to proceed when the accused is brought before him.

* *v. para. 370.*

† *v. para. 379.*

Trial of such persons before the sessions court, and punishment to be inflicted by fine and security for good behaviour.

which is to be estimated according to the best information that the judge is able to procure respecting it; and on proof to the judge's satisfaction of the prisoner's being guilty only as an accomplice, he is to be sentenced to the payment of a fine equal to one-fourth of his estimated annual income. In all cases of parties being sentenced to the payment of such fines, they are to be committed to, and are to remain in jail until the amount thereof be paid, or until they shall have delivered to the sessions court, or after the said court's departure to the magistrate, full and ample malzaminee or security to pay the same within six months from the date of their release; and such parties, before their enlargement, either in consequence of their having liquidated, or having entered into security for the payment of the fine imposed on them, are to deliver into the sessions court, or in its absence to the magistrate, fulzaminee or satisfactory security from one or more creditable persons not to offend in like manner in future. *Ben. Reg. XXI. 1795, sect. 3.*

Such sentences to be always reported within 10 days to the nizamat adawlut.

3943. All sentences passed by the sessions court under the above section, without however any intermediate suspension of their execution, are to be transmitted within ten days after their being passed to the nizamat adawlut, which court may order such mitigation and restitution of the fine or fines thereby imposed, as may be thought proper; but until the order be issued by the nizamat adawlut, the sentence of the sessions court is to be considered in full force, and to be carried into effect accordingly. *Ben. Reg. XXI. 1795, sect. 4.*

In case such brahmin resists the warrant of the magistrate, or absconds, or conceals himself, the magistrate is to attach his landed property through the collector.

3944. In case any brahmin, against whom the magistrate issues the warrant prescribed in sect. 2, refuses to obey, or resists or causes to be resisted, the peons deputed to serve it, or escapes after being taken by them into custody, or absconds, or shuts himself up in any house or building, or retires to any place, so that the warrant cannot be served upon him, the magistrate is to issue a precept to the collector requiring him to cause the nearest tulseeldar to attach the lands that such brahmin may possess in property, or in mortgage, or in farm, or lakhiraj. The lands are to remain attached until he surrenders, and the collections made during the attachment, after deducting such revenue as may fall due to government, are to be accounted for, and paid to the party against, or on account of, or in resentment to, whom the kurh was originally established, or the woman or women, or child or children, were to be wounded or slain; and after the surrender or apprehension of the brahmin or brahmins who set up the kurh, or was or were prepared to wound or slay his or their women or children, or either of them, his or their lands are to be released; but he or they are to be proceeded against, in respect to his or their trial for the original offence or offences, as prescribed in sects. 3 and 4. *Ben. Reg. XXI. 1795, sect. 5.*

Collector to apply to the magistrate in case of brahmins establishing a kurh, or being prepared to kill or wound women or children, on account of any process from the revenue department. Magistrate how to proceed.

3945. In the event of any brahmin or brahmins establishing a kurh, or preparing to wound or slay his or their women or children, or any or either of them, with a view to prevent the serving of any dustuck or writ on him or them for arrears of revenue by the local tulseeldar, or by the collector of Benares, the collector is to represent the circumstances to the magistrate; and upon the peon deputed with the dustuck, or any other creditable person or persons, attending in court and making oath to the truth of the circumstances stated in the representation of the collector, the magistrate is to proceed as above directed,

requiring likewise, in his notice, the brahmin or brahmins either to discharge the balance of rent or revenue that has been demanded from him or them, or to appear, and, entering security for such part of it as he or they may have pleas against the payment of, to file his or their objections to the payment of such part in the civil court, that the merits of the case may be enquired into and decided according to the principles by which other disputed demands and accounts of revenue are directed to be determined. If the issuing of this notice fails to induce the brahmin or brahmins to comply with the requisitions of it, the magistrate is to proceed and the accused brahmin or brahmins are to be tried, as directed above in sects. 2, 3, and 4. *Ben. Reg. XXI. 1795, sect. 6.*

3946. If any brahmin or brahmins, on account of any discontent or alarm, well or ill-founded, either against government, or its officers, or servants, establish a kurh, in which any person or persons are, at any period from its construction until its removal, burnt to death or otherwise lose their lives, in consequence of such kurh being set fire to by any person whomsoever; the brahmin or brahmins who have caused the construction thereof are to be held chargeable with, and made amenable for, the crime of murder; as well as the party or parties who have been immediately employed, or aided, in setting fire to the pile or combustibles in question; and upon proof of the fact to the satisfaction of the sessions court, such brahmin or brahmins, and such person or persons, setting fire to the kurh, are to be sentenced on trial before the said court to suffer the punishment of death, in the same manner as if they had committed and been convicted of *katl-dmd*, or premeditated murder, according to the doctrines of the Mahomedan law; and, with a view to render the example as public as possible, such sentence (whether consistent with the *futwa* of the Mahomedan law officers, or otherwise) is in this case to be accordingly formally passed by the sessions court on the brahmin or brahmins thus convicted; but it is to be at the same time explained to the party or parties thus condemned, as it is also hereby expressly provided, that all such trials and the sentences passed, are by the sessions court to be submitted (in like manner as is prescribed in sect. 47, Reg. IX. 1793*) to the *nizamut adawlut*; and the party or parties condemned under this section are to remain in jail to await the final judgment of that court, who are to confirm or mitigate the sentence as appears proper. *Ben. Reg. XXI. 1795, sect. 7.*

Brahmins causing the construction of a kurh, and persons firing it, are to be tried on a charge of murder for any loss of life occasioned thereby.

* v. para. 1284.

3947. If any brahmin or brahmins, under the circumstances and in the manner described in the preamble to and the following sections of this regulation, or under such circumstances and in such manner as is substantially similar thereto, with a sword or other offensive weapon, or otherwise, actually wounds his or their women or children, or other women or children; or any or either of them; on account or in resentment of any real or supposed injury committed towards him or them by any *âmils*, *tuhseeldars*, or other officers, or servants, employed in the revenue or judicial departments; or so wounds any of his or their own women or children, or any other woman or child, on account or in resentment of his or their differences with any individual; he or they are for such act or acts to be sentenced by the sessions court to transportation, subject to the same reference to the *nizamut adawlut*, and to the like mitigation as in the cases referred to in the preceding section. *Ben. Reg. XXI. 1795, sect. 8.*

Brahmins wounding women or children under such circumstances, how to be punished.

Brahmins killing women or children under such circumstances how to be punished.

Families of such brahmins to be banished and their lands forfeited;

but the forfeiture of the lands is not to be carried into effect without the sanction of government.

and in no case unless the whole of the family is banished.

Brahmins convicted of murder are not exempted from death.

3948. If any brahmin or brahmins, under the circumstances and in the manner described in the preamble to and subsequent sections of this regulation, or under such circumstances and in such manner as is substantially similar thereto, with a sword or other offensive weapon, or otherwise actually puts to death his or their women or children, or other women or children, or any or either of them, on account or in resentment of any real or supposed injury, committed towards him or them by *âmils*, *tuhseeldars*, or any other officers or servants employed in the revenue or judicial departments; or so puts to death any of his or their own women and children, or any other woman or child, on account or in resentment of his or their differences with any individual; he or they are to be tried for such homicide, and on the proof of the fact or facts are to be accordingly sentenced by the sessions court to capital punishment, subject to the same reference to the *nizamut adawlut*, and to the like mitigation of punishment as in the cases referred to in sect. 7; and the families of any brahmin or brahmins found guilty of murder under this section are, according to the order of the governor general in council under date the 17th June 1789, and the publication made in conformity to it by the resident at Benares under date the 7th July of the same year, to be banished from the province of Benares, and the Company's territories; and his and their estates in land are to be forfeited and disposed of as to government seems proper; and accordingly the sessions court is required to subjoin this order to all sentences that they pass on brahmins for murder under this section, at the same time reporting such sentence and order to the *nizamut adawlut*, together with as accurate an account as they may be able to procure of the number, sex, and age of the persons composing the family of such brahmin or brahmins, and annexing their opinion how far it may be advisable or otherwise rigorously to enforce the banishment of the family of such brahmin or brahmins, or to confirm, mitigate, or annul, the order for the forfeiture of their real property; and the *nizamut adawlut*, on consideration of this sentence and order, and of the opinion of the sessions court, are either wholly to confirm, or to mitigate the sentence and order as appears proper; and in all cases where the forfeiture of the landed property of such brahmin or brahmins, and that of his or their family, is confirmed by the *nizamut adawlut*, the said court is to advise the government thereof; nor is such sentence to be carried into execution as far as regards the forfeiture of the landed property without an order from the government approving such part of the sentence, and directing in what manner the lands thus forfeited are to be disposed of. *Ben. Reg. XXI. 1795, sect. 9.*

3949. Whenever the banishment is limited either to the party or parties committing the murder, or to a certain number only of his or their family or families, no confiscation or forfeiture of the landed property is in such instances to take place; but the same is to be entirely left in the possession, and as the property, of those members of the family who are exempted from banishment. *Ben. Reg. XXI. 1795, sect. 10.*

3950. Brahmins convicted of murder within the province of Benares are no longer exempted from a sentence of death: but the execution of a sentence of death against a brahmin is not to take place within the limits of any spot of ground held sacred by the Hindoos. The magistrates are enjoined to execute all sentences of death against brahmins at some convenient place situate without such limits. *Reg. XVII. 1817, sect. 15.*

3951. The offence of causing or procuring abortion has not been specifically provided for by any regulation. By the Mahomedan law it does not amount to murder, though the quickened fetus be destroyed, or the woman die from the means used to procure the abortion: and the nizamat adawlut “do not consider these offences to be of a heinous description, unless death ensue” to the woman. See C. O. No. 303 of vol. 1.(a) But the procuring of abortion has been distinctly recognized as a crime in the regulations, as in sect. 22, Reg. XXII. 1816; and therefore in trials held without the aid of a law officer the session judge is at liberty to pass sentence without reference. C. O. No. 1433, November 20, 1854. *W. P.*

Causing or procuring abortion.

How far punishable.

Trial held without law officer need not be referred.

3952. Where drugs were administered to a woman in order to procure abortion, under circumstances which precluded the supposition that her death was intended and she died from their effects, it was held that the crime was culpable homicide and not murder. To constitute murder under the regulations, as well as under Mahomedan law, there must be a murderous intent. Reports *W. P.* 1854, part 2, page 262.

Where death to the woman is not intended, it is only culpable homicide.

3953. The mere concealment of the birth of a newly born illegitimate child is punishable by a magistrate. Reports *W. P.* 1853, part 2, page 1554. But where the court acquitted the prisoner on every count except that for concealing the birth, they sentenced her to imprisonment for 7 years. Reports *W. P.* 1856, part 1, page 411. Where a widow concealed the birth of an illegitimate child, which she buried privately the same day, and it was proved that the child had been born alive, although there was not sufficient evidence to bring the charge of murder home to the prisoner, yet it was held that she was punishable for the concealment of the birth; and she was sentenced to imprisonment for 18 months with fine in lieu of labor. This precedent holds good whether the trial be held under the Mahomedan law or otherwise. Reports *W. P.* 1852, page 1541. So, for two years with fine in lieu of labor. Reports *W. P.* 1855, part 2, page 831.

Concealment of birth.

How far punishable.

3954. When the prisoner was secretly delivered of an illegitimate child, which she affirmed was still-born, and admitted that she had thrown away the evidence of her shame, the court remarked that while the disgraceful connection, out of which the birth arose, might naturally suggest concealment even of a still-birth, yet it may, on the other hand, afford strong *prima facie* ground for inferring a wilful destruction of her living infant with the same object. Difficulties of this nature can only be solved by a reference to the medical evidence, and the appearances visible on the body. Reports *W. P.* 1855, part 2, page 337.

Illegitimacy of child *prima facie* proof of the homicide.

3955. In a case of attempting to commit suicide, which the session judge referred to the sudder court as beyond his competence, the court held that the session judge should have disposed of the case either under Reg. XII. 1829* (if he thought that law to apply to the case), or otherwise under the general powers vested in him, by Reg. LIII. 1803,† to pass sentence in cases not specifically provided for by the regulations, but punishable under

Attempt to commit suicide.

Within the competence of the session judge;

* i. e. as for a case of wounding with attempt to murder, see para. 3867 et seq.

† v. para. 1314.

(a) By the English law, under a late statute, “whosoever, with intent to procure the miscarriage of any woman, shall unlawfully administer to her, or cause to be taken by her, any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, shall be guilty of felony,” punishable with transportation for life, or for not less than fifteen years, or imprisonment not exceeding three years; and it is immaterial whether the woman was or was not pregnant at the time.

or magi-
strate.

‡ *v. para.* 705.

the Mahomedan law of tazeer. The court also observed that the magistrate might have passed sentence upon the prisoner under the provisions of sect. 19, Reg. IX. 1807,‡ if he considered the case not to call for a severer sentence than he could inflict. Reports *L. P.* 1853, part 1, page 842.

**Mahomedan
law.**

Homicide is jus-
tifiable

in war;

of an apostate;

of an insurgent,

of a condemned cri-
minal;

of a murderer liable
to kisas, by the per-
son entitled there-
to;

in self defence, or
defence of another;

in preservation of
property from theft;

in prevention of
adultery or other
heinous crime;

by desire of the
person killed;

3956. By the Mahomedan law homicide is considered as justifiable, or culpable. Justifiable homicide (*katl-i-mabâh*) is not distinctly treated of in the books: but is incidentally mentioned, as commanded in the advancement of religion or justice; as authorized in the defence of the person or property; and for the prevention of an atrocious crime; or as exempted from the provisions against unlawful homicide in consideration of some circumstances of necessity or justification. The following instances have been expressly noticed by the authorities:—I. In prosecution of war against hostile infidels, for the advancement of Islam, or in support of a Mussulman community.—II. Of an apostate from the faith of Islam, who, after being duly called upon, persists in his apostacy; an apostate being considered as an alien or enemy.—III. Of an insurgent against the rightful imam, when slain in the act of insurrection, or of open resistance to the established government.—IV. Of a condemned criminal, by order of the kazee or magistrate authorized to pass sentence of death. So, if the magistrate order the infliction of legal punishment not capital, and it happen to occasion death.—V. Of a murderer liable to kisas, if killed by the person legally entitled to retaliation, or by his express direction, although sentence of kisas may not have been passed by the kazee. This assumption of right, without a judicial enquiry, is however deemed culpable; and the exercise of it by any other weapon than a sword, or similar instrument, is declared subject to correction.—VI. In self-defence, or in defence of another, if life be endangered, or be thought in danger, from the assault of a person having a drawn sword, or other mortal weapon; provided self-defence be manifestly unattainable without killing the aggressor.—VII. In preservation of property from theft or robbery, provided the owner cannot recover his property but by killing the thief. A real or presumed necessity is required to render the homicide justifiable.—VIII. In prevention of adultery, rape, or other offences of a heinous nature, being chiefly such as, by the Mahomedan law, are punishable with death. It seems that if a person finds a man in the act of adultery, or in the attempt to commit it, with his own wife, or other near connection, and the latter assenting thereto, he may kill them both; or, where the female is not consenting, he may kill the violator; (*N. A. R. vol. 1, pages 5, 78, 156.*) the concealment of such killing would however render him liable to punishment; (*N. A. R. vol. 1. page 240.*) and it is sufficient presumption of adultery if he finds a man in bed with his wife; (*N. A. R. vol. 1, page 151.*) but the homicide is not justifiable after the completion of the adultery, unless the person slain has been found in the house of the husband, master, or relation, who kills him; (*N. A. R. vol. 1, pages 39, 71, 74n, 78, 197.*) nor is a mere suspicion of adultery a sufficient justification; (*N. A. R. vol. 2, page 100.*) nor, in the case of any other woman (or according to Imam Mahomed in any case) would the homicide be justifiable, unless all other means within the power of the slayer, as calling out, should have failed to prevent the commission of the offence. (*N. A. R. vol. 1, page 74.*)—IX. The killing

another at his express desire or command. (*N. A. R. vol. 1, page 1*;) for a man has power to dispose of his own life, as of other personal and proprietary rights; and therefore suicide incurs no forfeiture or other penalty, under the temporal law of Islam; and so, as homicide by duelling is committed by mutual consent, the penalty of murder is not incurred. (*N. A. R. vol. 1, page 277.*)—X. By compulsion, under menaces which induce a fear of death: but such homicide is not strictly justifiable, the penalty of *kisas* being transferred to the compeller, and the compelled person liable to discretionary punishment, if the circumstances of the case appear to require it.* This principle, which regards the compelled person as the instrument rather than the author of the homicide, is applicable to every case of physical compulsion and necessity: but no illegal act can be justified by the mere command or influence, unaccompanied with force or menaces, of a parent, husband, or master, or of any person whatever. Neither is the justification of homicide in support of the law, and of legal process, in all cases expressly provided for; though it cannot be doubted that, in cases of resistance to such process, any acts unavoidably done in the execution of public duty might be justified; and that the principles of justification which have been stated in cases of a private nature, would be applicable with additional force in all matters connected with the execution or advancement of public justice. The general principle on which the above rules are founded is, that every Mahomedan may inflict tazeer upon a criminal in the act of committing a crime, but that after the completion of the offence the magistrate alone is authorized to punish the offender. and by compulsion.

* r. *N. A. R. vol. 1, page 101.*

General principle.

3957. The Mahomedan law recognizes five descriptions of culpable homicide:—1. *katl-âmd*, or wilful homicide; implying a murderous will evinced by a voluntary act, and by the use of a mortal instrument, or something likely to occasion death:—2. *katl-shabah-âmd*, or wilful-like; i. e. resembling the former in the voluntariness of the act, but differing from it by the use of an instrument not considered to endanger life, and therefore not evincing a murderous intention:—3. *katl-khatâ*, or erroneous homicide; viz. by an erroneous act, or by error in the intention:—4. *katl-kâim-makum-i-khatâ*, called also *jari-majra-i-khatâ*, or involuntary homicide:—5. *katl-ba-sabab*, or accidental homicide by an intervenient cause. Five descriptions of culpable homicide.

3958. *Katl-âmd* is defined in the Hedayah to be “homicide committed by a responsible (i. e. a sane and adult) person, wilfully striking another person with a mortal weapon, or something that serves for such, as a sharp piece of wood, a sharp stone, or fire.” It is added in explanation, that “*âmd* means intentional; but the intention, being concealed in the mind, can be discovered only by something affording proof of it; and, as the use of a common instrument of homicide does afford such proof, when the slayer of a man uses an instrument of that description, it proves his intention to kill.” Wilful homicide *katl-âmd*.

3959. *Shabah-âmd* differs from *katl-âmd* only as regards the intention to kill. Abou Huneefah and his disciples disagree as to the definition of this offence; but the difference between them respects only the instruments to be admitted as sufficient evidence of the intent to kill; the former restricting *katl-âmd* to cases in which a mortal weapon (i. e. one appropriated or commonly used for the purpose of killing) is the instrument of death, the Wilful-like, *katl-shabah-âmd*.

latter including therein all instruments likely to kill. (*N. A. R. vol. 1, pages 5, 65, 95.*) Thus, the disciples hold in opposition to Aboo Huneefah that murder by strangling is liable to *kisas*. (*N. A. R. vol. 1, page 41.*) And, where the weapon was not found, the *futwa* declared the prisoner convicted of *shabah-âmd* only. (*N. A. R. vol. 3, page 106.*) According to the uniform opinion of Aboo Huneefah and his disciples, killing by poison, in whatever manner it may be given, is not deemed wilful homicide. The fine of blood is payable as for manslaughter, if the poison be compulsively put by another into the mouth of the deceased. But if the deceased took the poison into his own hands, and eat or drank it without compulsion, though he did not know it to be poison, the giver is liable to discretionary punishment only. But the discretionary punishment, it is said, should extend to death; as the offence is of that heinous nature which is declared punishable with death for the security of mankind. (*N. A. R. vol. 1, page 58.*)

Erroneous homicide, *katl-khatâ*.

3960. The error which distinguishes *katl-khatâ*, or erroneous homicide, is either in the act, or in the intention: in the former, as when an arrow is shot at a mark and hits a man, or when a blow aimed at one person undesignedly strikes another; if an arrow shot at one person pass through him, and afterwards kill another, the homicide is wilful as regards the first, and erroneous as regards the second: in the latter, as when one shoots at a man mistaking him for a deer; or when a Mussulman kills another Mussulman under a supposition of his being a hostile infidel whom it is lawful to kill.

Involuntary homicide, *katl-kâim-makâm-i-hhatâ*.

3961. *Katl-kâim-makâm-i-khatâ* is involuntary homicide by an involuntary act; as when a sleeping person falls on another from the roof of a house, and kills him in the fall; or where a horse tramples a person to death, without the rider's designing it, or being able to prevent it.

Accidental homicide by an intervening cause, *katl-ba-sabab*.

3962. Accidental homicide by an intervenient cause, *katl-ba-sabab*, is when a person, by doing an illegal act, produces a cause which occasions the death of another; as if a man digs a well in ground not belonging to him, and another falls into the well and is killed.

Penalty for wilful homicide.

3963. Mr. Harington gives a series of cases, quoted from the Hedaya and the Futawa-i-Aalumgiri, explanatory of the differences between the several descriptions of homicide noted above; in which the distinction has been settled into precedent; but it seems that the general definitions here given will suffice for practical purposes.—The penalty for *katl-âmd* is *kisas*, unless the heirs or representatives of the slain forgive or compound the offence. The murderer is also excluded from inheritance to the property of the slain. The retaliation allowed for murder is stated to have two ends in view: first, satisfaction to the heirs of the slain; secondly, the determent of others, by exemplary punishment, from committing the same crime. The latter, however, though the true and only justifiable motive for capital punishment by human laws, is a secondary object of the law of *kisas*; which considers the private injury in cases of homicide, unaccompanied with highway robbery or other violent breach of the peace, to be of greater magnitude than the public detriment; and consequently leaves the demand of retaliation, with liberty of forgiveness or composition, to the feelings and discretion of the legal representatives of the person murdered. The punishment for *shabah-âmd*, *katl-khatâ*, and *kâim-makâm-i-khatâ*, includes

Penalties for the

diyut, or the fine of blood, exclusion from inheritance, and expiation (*kafara*) by emancipating a Mussulman slave or fasting for two months. Diyut only is incurred for *katl-ba-sabah*.

other descriptions of homicide.

3964. The first requisite for retaliation is that the blood of the deceased was under protection of the law, from permanent residence within the territory of a Mahomedan state (*dar-ool-islam*) in subjection to its authority; and in such case the slayer is equally liable to retaliation, whether the party slain were a Mussulman or a zimme, the slave of another (not the slayer's) or free, a woman or a man, an infant or of mature age, sound in body and mind, or sick, dismembered, blind, lame, or insane; but a Mussulman may not be put to death for a moostamin, that is, an alien in a state of enmity. Retaliation is not incurred by a parent, or by any paternal or maternal ancestor, for the murder of a child, or lineal descendant, in consequence of a specific declaration to that effect in the koran, and in consideration of the slain having derived existence from the slayer*: and as *kisas* is the right of the heir, it cannot be awarded against a master for the murder of his slave, for the master would be the only person entitled to demand it; nor for the murder of his child's slave, because the claim for retaliation would accrue to the child against the father, and the enforcement of such a right is forbidden out of regard to paternity. If the slave were the joint property of the murderer and others, the other owners could not claim retaliation, for their right is not entire, and retaliation of death does not admit of being inflicted in part only. If a murder be committed by several, one of whom is legally exempt, retaliation is barred against the whole; but if none can claim exemption, then the analogy of equality, which would require that one be put to death for the murder of one, is abandoned in favor of a more approved construction of law, namely, that each individual concerned is as if he alone had committed the act; and the requisite equality being thus established, retaliation is incurred, that the lives of mankind may be in security. If two persons jointly commit homicide, one with a mortal weapon, the use of which characterizes wilful murder, and the other with a weapon not likely to inflict death, retaliation is barred against both; but the fine of blood is payable in equal shares; one-half to be paid by him who struck with the mortal weapon, because in all cases in which the fine is not the prescribed punishment, but a commutation, the fine is due from the property of the offender; and the other half by the *hakila* of him, who struck with the weapon not deadly, because specific fines for offences are due from the *hakila*.

In what cases of wilful homicide, *kisas* is incurred;

and in what not incurred.

* *N. A. R.* vol. 1, pages 24, 103, 231, 370; vol. 2, page 161.

Rule when more than one person is concerned in the murder.

By whom the fine of blood is to be paid.

Evidence required to warrant a sentence of *kisas*.

3965. To warrant a sentence of *kisas*, the Mahomedan law requires either the confession of the accused, or the positive testimony of two competent eye-witnesses of ascertained or apparent credit. No presumptive evidence is sufficient; and *kisas* is barred by any doubt as to the justification or other exculpatory plea of the accused. Thus the confession must declare that the blow, wound, or other cause of death, was wilful, and inflicted by the prisoner's own hand; and the whole of what is stated in explanation must be considered as part of the confession. Where sufficient evidence is not adduced, and there appear to be grounds for conviction from the whole of the evidence on the trial and the circumstances of

the case, the conviction is stated to be upon ghalib-oos-zana, akbari-rai, shubha-i-kawi or shadid, meaning strong or violent presumption. (*N. A. R. vol. 1, pages 11, 26, 35, 70, 202; vol. 2, page 60.*) The law officers have declared kisas barred on the ground of its not being proved which prisoner inflicted the mortal wound; but the prisoners were held liable to diyut and exemplary punishment by seasut. (*N. A. R. vol. 3, page 75.*)

By whom retaliation for murder is demandable.

3966. Retaliation for murder is considered to be the right of the person murdered, and to devolve to his legal heirs, who represent him in the exaction of it. This right therefore appertains to the husband, and to the wife, as well as to the heirs of blood; and the same rule is applicable to the right of diyut. If the heir of the slain be a minor, or idiot, and his or her father be living, the latter is entitled to demand or compound retaliation; but an appointed guardian, not being the father, is not so empowered, "because, the end of retaliation being relief and satisfaction to the mind, the father alone is a sufficient substitute for his children with respect to their feelings." Where some of the heirs are minors, and some adult, the lawyers differ as to the right to demand kisas before the former attain maturity, the two disciples maintaining the imperfection of the right: and so, when one or more of the heirs is an idiot, or insane, or absent. When all the heirs are minors, some lawyers consider the sovereign, or his delegate, to have the power of enforcing kisas in their behalf; while others think that it should be deferred till one or more of the minors become of age. It is however generally agreed, that if there is no heir or legal representative, the kazee, as the deputy of the sovereign, may enforce retaliation of death.

Right of such persons to compound their claim to kisas.

3967. Retaliation of death, in cases of murder, being considered the private right of the heirs, they are at liberty to remit their claim, and forgive the offender, or to compound with the consent of the murderer for such compensation as the parties agree upon. If there be several heirs, and one of them forgive the offence, or compound with the offender, the other heirs are thereby debarred from enforcing kisas, but are entitled to their proportion of the fine of blood. If a man murder two persons, and the heirs of one only forgive him, the heirs of the other are still at liberty to demand retaliation. In like manner, when two or three persons are murdered, the heirs of any of them, who may attend and demand kisas, are entitled to the enforcement of it without waiting the attendance of the heirs of all the slain; and when the offender has suffered retaliation of death for one murder, the heirs of other persons murdered by him are not entitled to claim payment of the fine of blood from his estate: nor is such fine payable, if the party, liable to kisas for murder, die before the execution of it. But if a murderer, sentenced to suffer kisas, become insane before he has been delivered over by the kazee for execution, he is not to be put to death; and his property is answerable for the fine of blood. If he become insane after he has been condemned and delivered over for execution, he may nevertheless be put to death. It is not requisite that the heir should execute the sentence with his own hand; but his presence is requisite. A sword or similar weapon is the prescribed instrument; and the established mode of execution is by decapitation.(a)

How far insanity bars the execution of sentence of kisas.

Execution.

(a) Harington's Analysis, vol. 1, page 243, *et seq.*—Hedayat, book 49, *et passim*.

3968. Prisoner sentenced to death, on conviction of the murder of his wife under a sense of disgrace or irritation from her adulteries; *N. A. R. vol. 1, pages 68 and 133; vol. 2, pages 160 and 167; and vol. 3, pages 15 and 71*:—on conviction of the murder of his wife and two children, from suspicion of his wife's fidelity: *N. A. R. vol. 1, page 108*:—on conviction of the murder of his wife and mother-in-law from jealousy of the former; *N. A. R. vol. 2, page 100*:—on conviction of the murder of his wife or concubine from motives of jealousy; *N. A. R. vol. 1, pages 21, 32, 77, 84 and 86*. Sentenced to imprisonment for life, on conviction of the murder of his wife from feelings of jealousy; *N. A. R. vol. 2, page 85; vol. 3, page 154*:—on conviction of the murder of his wife, on his own confession in consequence of his having detected her in adultery; *N. A. R. vol. 6, page 346*:—on conviction of the murder of his wife in a fit of passion at her attempting to justify the adultery she had committed the day before; *N. A. R. vol. 2, page 237*:—on conviction of the murder of his wife and a procuress, and wounding a servant-maid who had aided his wife in an adulterous intercourse, and also wounding two men with whom she had committed adultery; *N. A. R. vol. 2, page 397*:—on conviction of the murder of his wife, under feelings of shame excited by the violation of her person; *N. A. R. vol. 2, page 411*:—on receiving abusive language when begging her to desist from criminal intercourse with another man; *N. A. R. vol. 2, page 79*. Sentenced to imprisonment for 7 years on conviction of the deliberate murder of his wife and a man with whom she had eloped, but not in the act of adultery; *N. A. R. vol. 1, page 197*. Husband and his nephew sentenced to transportation for life for murder of wife, when there was a strong presumption that she had been detected in adultery, although no proof of it appeared in the evidence; *N. A. R. vol. 6, page 189*. Sentenced to imprisonment for life, on conviction (five years after the occurrence) of the murder of his wife, the justificatory plea contained in his thana confession, that he caught her in the act of adultery, being subsequently retracted; *N. A. R. vol. 2, page 472*. Sentenced to death, on conviction of the murder of his wife for leaving or threatening to leave his house; *N. A. R. vol. 1, pages 12 and 331; vol. 3, page 345*:—on conviction of the murder of his concubine, for refusal to continue the adulterous intercourse; *N. A. R. vol. 1, pages 64 and 67*:—for refusal to take drugs to procure abortion; *N. A. R. vol. 1, page 336*. Sentenced to transportation for life, on conviction of the murder of his mistress in a fit of sudden passion on her refusing him access to her; *N. A. R. vol. 6, page 56*.

3969. Prisoner sentenced to death on conviction of the murder of his wife after a quarrel, the provocation if any arising from his own conduct; *N. A. R. vol. 1, page 24*. Sentenced to imprisonment for life on conviction of the murder of his wife in a quarrel without premeditated intention, or without intent to kill; *N. A. R. vol. 2, page 178; vol. 3, page 250; vol. 4, page 90*:—and in a case of the same nature, sentenced to imprisonment for 7 years; *N. A. R. vol. 1, page 112*. Sentenced to death for murder of concubine or wife, on provocation of abusive language; *N. A. R. vol. 1, pages 60 and 86; and vol. 5, page 160*. Where the motive did not appear, sentence of death was passed in *N. A. R. vol. 1, page 103; vol. 2, page 102; vol. 3, page 235; vol. 6, page 110*; and sentence of imprisonment for life in

Precedents.**Murder of wife or concubine.**

Incited by causes connected with adultery or jealousy.

Incited by other causes.

Motive unknown.

Other cases.

N. A. R. vol. 2, page 175; and vol. 4, page 125. Prisoner convicted of the murder of a woman whom he had married during the absence of her lawful husband, on receiving a summons from the criminal court in a suit instituted against him by the husband, under Reg. VII. 1819, for her restoration, and sentenced to death; *N. A. R. vol. 3, page 343.* Prisoner convicted of the murder of his wife, who was insane, after she had, as alleged by him, killed his two daughters; and sentenced to imprisonment for life; *N. A. R. vol. 4, page 133.* When the murderous act followed close on gross abuse uttered by the deceased, in which she had been indulging for several days before, the prisoner was transported for life. Reports *IV. P. 1854, part 1, page 40.*

Murder of the wife's paramour by the husband.

Without justification.

With a certain justification.

3970. Prisoner sentenced to death, on conviction of murder of the supposed paramour of his wife from revenge for the adultery; *N. A. R. vol. 1, pages 15, 20 and 128.* Sentenced to imprisonment for life in cases of the like nature; *N. A. R. vol. 2, page 98; and vol. 4, page 255.* Sentenced to transportation for life, on conviction of killing his wife's paramour, and wounding his wife, when he found them in adulterous intercourse in the middle of the night, although he had long known that a criminal intercourse existed between them; *N. A. R. vol. 6, page 27.* Sentenced to imprisonment for 7 years, on conviction of murder from resentment of deceased having attempted to violate his wife; *N. A. R. vol. 1, page 61.* Conviction of murder in revenge for the seduction of his wife; but, the province of Kumaon having been recently brought under the British rule, the plea of long established usage, as opposed to the laws lately introduced and imperfectly understood, was admitted in mitigation of punishment, and the sentence passed was for imprisonment for only 5 years; *N. A. R. vol. 1, page 388.* Sentenced to imprisonment for 2 years, on the presumption that he killed the deceased in the act of adultery with his wife; *N. A. R. vol. 1, page 375.* Sentenced to imprisonment for 1 year, on conviction of the murder of his servant, who had forcibly carried off his wife, and had criminal intercourse with her, and whom he suspected of stealing his cattle and setting fire to his house; *N. A. R. vol. 1, page 95.* Prisoner pardoned, after conviction of murder, under circumstances of extreme provocation, from the deceased (after having been forewarned of the consequences by the prisoner) being found in the prisoner's house at night attempting to violate his wife; *N. A. R. vol. 1, page 71.*

Murder of the husband by the wife or her paramour.

Presumptive proof.

Without intent to murder.

3971. Prisoner sentenced to death, on conviction of murder of the husband in prosecution of an adulterous intercourse with the wife; *N. A. R. vol. 1, pages 2, 38, 72, 78 and 175.* Where the wife was concerned in the commission of the murder, she also was sentenced capitally; *N. A. R. vol. 1, page 81*:—where she was convicted of privity before or after the fact, the paramour was condemned to death, and the wife to imprisonment for 7 years; *N. A. R. vol. 1, page 117; and vol. 2, page 75*;—and in one case for life; *N. A. R. vol. 5, page 116.* In a case where the wife and her paramour were convicted on violent presumption of the murder of the husband by poison, but where the actual proof that death was caused by the poison was wanting, both prisoners were sentenced to imprisonment for life, the man in the Alipore, the woman in the district jail; *N. A. R. vol. 2, page 156.* In a case where the paramour killed the husband, but without apparent

intent to murder, in the husband's house, the blows appearing to have been struck with a view to facilitate his escape on being recognized, he was sentenced to imprisonment for 14 years; *N. A. R. vol. 1, page 167.*

3972. Prisoner sentenced to death, on conviction of murder from rivalry in adultery; *N. A. R. vol. 1, pages 9, 11, 35, 184; and vol. 2, page 342*:—from revenge for obstructing the prosecution of criminal intercourse (the person killed in one case being the mother of the prisoner and the adulteress his aunt); *N. A. R. vol. 1, pages 26 and 93*:—on conviction of the murder of his sister and her paramour (the father and mother of the prisoner convicted as accessaries, but released on account of age and infirmity); *N. A. R. vol. 4, page 323*:—on conviction of the murder of his two cousins for adultery with his wife, a woman of acknowledged bad character, the murder being committed a fortnight after she had left his house to live with them; *N. A. R. vol. 3, page 145*:—on conviction of murder in revenge for adultery with his sister; *N. A. R. vol. 1, pages 9 and 78.* Prisoner sentenced to death, on conviction of the murder of a rival wife by poison; *N. A. R. vol. 2, page 347.* No. 1 convicted as principal, and No. 2 as accessory, in murder from revenge for criminal intercourse of the sister No. 2 (she being related to the other prisoner) with the deceased; and sentenced, No. 1 to imprisonment for life, and No. 2 for 7 years; *N. A. R. vol. 4, page 130.* Prisoners (a Hindoo and a Mussulman) sentenced to imprisonment for life, on conviction of the deliberate murder of a Hindoo priest in revenge for his intriguing with their wives; *N. A. R. vol. 5, page 14.*—No. 1 convicted as principal, and Nos. 2 and 3 as aiders and abettors, in the murder of deceased whom they caught in the act of criminal intercourse with the daughter of No. 1, and sister of the others; and sentenced No. 1 to imprisonment for 7 years, and Nos. 2 and 3 for 4 years; *N. A. R. vol. 5, page 104.* Prisoner sentenced to imprisonment for 3 years, on conviction of murder under great provocation, the deceased forcibly carrying off his sister from his house at night, with an apparent intention of having criminal connection with her; *N. A. R. vol. 1, page 125.* Prisoners convicted of murder in having killed by blows and kicks, without the use of any weapon, a person who had a few days previously seduced the wife of one of them; and sentenced, under the circumstances, to imprisonment for 7 years with labor and irons; *N. A. R. vol. 6, page 325.*

Murder from revenge caused by adultery or rivalry.

Sentence of death

Rival wife.

When the act was committed under provocation, the sentence has been of imprisonment for life, or for a shorter period.

3973. Sentence of death passed, on conviction of murder, in prosecution of previous enmity; *N. A. R. vol. 1, pages 6, 47, 182, 190; vol. 2, pages 5, 152, 241, 293; and vol. 5, page 9*:—where the murder was committed in an open attack by a large body of men; *N. A. R. vol. 1, page 323*:—on conviction of murder, in revenge for various trifling causes of offence; *N. A. R. vol. 1, pages 41, 43, 45, 65, 83, 88, 105, 135, 145; vol. 5, page 98; vol. 6, page 25*:—in revenge for exacting usury; *N. A. R. vol. 1, page 27*: on a quarrel regarding money-matters; *N. A. R. vol. 1, page 172; vol. 5, page 45*; in the last case the prisoner's great age, 80 years, and infirmities was not considered a bar to capital punishment:—on a quarrel arising in a dispute regarding property; *N. A. R. vol. 1, page 15; vol. 2, page 58; and vol. 3, page 256*:—in revenge for abuse; *N. A. R. vol. 1, pages 46 and 50*:—in revenge for executing process against him; *N. A. R. vol. 3, page 175*:—for not attending as police officer to his complaint; *N. A. R. vol. 1, page 80*:—for not

Murder from enmity or revenge.

Sentence of death passed where no circumstances extenuated the malice.

consenting to prisoner's marriage with his daughter; *N. A. R. vol. 1, page 92*:—in revenge for the death of his father in an affray which occurred seven years previously; *N. A. R. vol. 1, page 89*:—on conviction of the murder of the woman in order to conceal the rape; *N. A. R. vol. 5, page 94*:—in order to prevent the deceased from bringing a charge of theft against him; *N. A. R. vol. 2, page 149*:—on conviction of the murder of his own daughter from revenge against his son-in-law; *N. A. R. vol. 2, page 355*:—of her son in revenge for his turning her paramour out of the house; *N. A. R. vol. 4, page 154*:—of the murder of one person with a view of charging the murder against another from enmity; *N. A. R. vol. 4, page 235*; *vol. 5, pages 7, 100, and 142*:—convicts murdering the magistrate; *N. A. R. vol. 4, page 296*:—and subordinate jail officer; *N. A. R. vol. 5, page 37*:—murder committed under the influence of a spirit of fanaticism; *N. A. R. vol. 5, page 4*:—massacre committed during the Cole insurrection; *N. A. R. vol. 4, page 222*. In a case where the prisoner was a professed *lathiwala*, the absence of any previous ill-will against the deceased was held to be an aggravation rather than a mitigation of the offence; *N. A. R. vol. 6, page 53*. The principal in the murder of two girls, one of 16 and the other of 7 years of age, sentenced capitally, and two accomplices sentenced to transportation for life; the most reasonable supposition being that violence had been attempted, if not completed, on the person of the elder girl, and that she was murdered in brutal rage in consequence of her offering resistance; *N. A. R. vol. 6, page 212*.

Case of professed lathiwala.

Where two girls were murdered for resisting attempt at rape.

Sentence of imprisonment for life;—where the murder was unpremeditated,

presumptive proof;

prisoner a hill-man;

proof on confession containing an extenuating plea;

3974. Sentence of imprisonment for life passed, on conviction of murder in sudden quarrel; *N. A. R. vol. 2, pages 183, 301*; *vol. 3, pages 25, 199*; *vol. 4, pages 110, 242, and 325*:—where the prisoner witnessed a gross insult offered to his sister by the deceased, who put his hand on her breast, and he went into his house, brought out his sword, and cut him down; *Reports W. P. 1855, part 1, page 903*:—where the husband and wife quarrelled before going to sleep, and the wife got up during the night and killed him; *N. A. R. vol. 6, page 33*:—where the motive was previous enmity, but the actual murder unpremeditated; *N. A. R. vol. 3, page 67*:—where the murder was committed under irritation at being accused of theft by the deceased; *N. A. R. vol. 2, page 193*:—where the enmity arose from deceased having accused the prisoners falsely of heinous crimes, and having extorted money from them to conceal his knowledge of the pretended accusations; *N. A. R. vol. 4, page 76*:—where the motive was revenge for abuse, but the intent to kill not clearly apparent; *N. A. R. vol. 4, page 335*:—where slight provocation had been received, and the proof amounted to violent presumption only; *N. A. R. vol. 6, page 43*:—where the prisoners were convicted on violent presumption only; *N. A. R. vol. 5, page 161*:—where the criminal was a hill-man, acting under the impulse of violent passion, inflamed by drinking ardent spirits, and was not apprehended until 17 months after the deed; *N. A. R. vol. 4, page 102*:—where the prisoner and the deceased were rival doctors in the village, and the proof rested on the confession of the prisoner extenuated by the assertion that he killed the deceased under the impression that he was a thief; *N. A. R. vol. 4, page 127*:—where the evidence rested on the confession of the prisoner which contained an extenuating plea; *N. A. R. vol. 3, page 244*:—where a brother murdered his sister, not from malice, but to prevent her conversion to

Mahomedanism, and the proof rested on the confession of the prisoner; *N. A. R. vol. 2, page 33*:—where the prisoner killed the deceased who came to him for a debt and would not let him eat or drink, and there was no other evidence than the confession of the prisoner; *N. A. R. vol. 2, page 39*:—where the crime was committed in a case of assault and plunder, perpetrated 15 years previously, and two of the accomplices had been sentenced at the time for affray to one year's imprisonment without labor; *N. A. R. vol. 3, page 164*:—where the prisoner killed the deceased at her own request, and the proof rested chiefly on his own confession; *N. A. R. vol. 5, page 118*. Capital punishment has also been remitted, in consideration of the youth of the prisoner, 15 years; *N. A. R. vol. 3, page 200*:—in consideration of the futwa being for an entire acquittal; *N. A. R. vol. 3, page 335*:—when the murders were committed at the breaking out of the insurrection of the Coles, in which the people were excited by their superiors to every act of violence and bloodshed; *N. A. R. vol. 4, page 240*.

accomplices previously sentenced as for a minor offence; various cases.

3975. Two police burkundazes, convicted of torturing three persons to extort money, one of whom was so much injured that he died shortly after release, were held guilty of wilful murder, and sentenced to imprisonment one for 14 and the other for 7 years. *Reports W. P. 1855, part 1, page 141*.

Case of police officers causing death by torture.

3976. Where the motive for the murder has not been shown, the murderers have generally been sentenced to death; *N. A. R. vol. 1, pages 82, 100, 115, 144, 200; vol. 2, pages 254, 289; and vol. 3, page 82*:—but in two similar cases, in which the evidence amounted to violent presumption only, the sentence passed was for imprisonment for life; *N. A. R. vol. 1, page 19; and vol. 3, page 108*.

Motive unknown.

3977. The prisoners, a Garrow chief and his bondsman, were convicted of the murder of another of his bondsmen; but, with reference to the barbarous state of the country, the provocation given by the deceased, the authority formerly exercised by the family of the chief, the subjection to him as his bondsman of the other prisoner, and the other circumstances of the case, they were sentenced to imprisonment for two years; *N. A. R. vol. 3, page 140*:—in another case, where there was no evidence against the prisoner, a Garrow, except his own voluntary confession that he had put the deceased to death, because he would not pay his debt, sentence was passed of 14 years' imprisonment with labor and irons in banishment; *N. A. R. vol. 4, page 270*.

Cases of Garrows.

3978. Among the cases cited above, the principals and accomplices have both been sentenced to death; *N. A. R. vol. 1, pages 45 and 190*:—or the principals sentenced to death, and the accomplices to imprisonment for life; *N. A. R. vol. 1, pages 27, 47, 182, 200, 323; vol. 2, pages 5, 289; vol. 4, pages 154, and 296*:—where the prisoners were convicted of the murder of a whole family, from motives of revenge for their having purchased the estate of some of the prisoners at a public sale for government arrears, 4 were sentenced to suffer death, 14 imprisonment for life, and the others imprisonment for 14 years; *N. A. R. vol. 2, page 58*:—in a somewhat similar case, where an attack was made by a body of 20 or 25 armed persons, and a whole family most barbarously murdered, 2 of the most active were sentenced to death, and the others to imprisonment for 7 years

Principal, and accessories.

Cases in which the principals have been sentenced to death.

in banishment, chiefly on their own confessions; *N. A. R. vol. 4, page 222*:—where one prisoner enticed the deceased to the spot, where the other prisoner was lying in wait, and the man was then murdered, both prisoners were sentenced to death; *Reports W. P. 1856, part 1, page 293*:—where 3 of the prisoners, convicted as principals in the murder were sentenced capitally, a fourth for the same offence, but as having a less active share, was sentenced to imprisonment for life; a fifth for being privy to the same to imprisonment for 7 years; and a sixth for privy after the fact to 3 years' imprisonment; *N. A. R. vol. 2, page 293*:—where the 4 principals were sentenced, 2 to death, and 2 to imprisonment for life, an accessory after the fact was sentenced to 3 years' imprisonment; *N. A. R. vol. 3, page 256*:—where the 2 principals were sentenced, one to death, and the other to imprisonment for life, 2 others were sentenced to imprisonment for three years for privy after the fact and concealing their knowledge thereof; *N. A. R. vol. 4, page 235*:—where the prisoners, four brothers, murdered a woman, whom they had forcibly carried off, and whom three of them had ravished, 2 were sentenced capitally, one to imprisonment for life, and one to imprisonment for 21 years; *N. A. R. vol. 5, page 94*:—where the actual murderer was sentenced to death, the person who ordered the assault was sentenced to imprisonment for life, 4 as aiding and abetting to imprisonment for 7 years, and one aiding and abetting but acting under influence to 4 years' imprisonment; *N. A. R. vol. 6, page 53*. Where it appeared, from the prisoner's own statement, that he was an accessory before the fact to the deliberate murder of a stranger, living in his house, for the sake of sharing in the plunder to be acquired by the murder, and that he gave the weapons, with one of which the murder was perpetrated, for the express purpose of their being used by the murderer in despatching his victim, he was sentenced capitally; *N. A. R. vol. 6, page 254*. Where the prisoners were convicted of being present at and aiding and abetting in the massacre of 33 persons from enmity, the principals having escaped, they were sentenced to imprisonment for life; *N. A. R. vol. 2, page 173*:—where there was no proof by whose hand the murder had been committed, 3 prisoners were sentenced as accomplices to imprisonment for life, one as being present and cognizant of the intent to 14 years, and another as aiding and abetting to 7 years' imprisonment; *N. A. R. vol. 3, page 282*:—where one prisoner was seen beating the deceased, but there was no other evidence as to her death, and the other prisoner, the husband of the deceased, concealed her death until the discovery of the body with marks of violence thereon, the former was sentenced as aiding and abetting in the murder to imprisonment for life, and the latter for 7 years; *N. A. R. vol. 4, page 5*:—where the prisoners were convicted of being accomplices in the murder, the principal, a European, having been tried and acquitted in the supreme court, 3 were sentenced to imprisonment for life, 3 for 14 years, and 3 for 7 years; *N. A. R. vol. 4, page 15*:—where the prisoner was convicted of being an accomplice in murder, for which his associates had been tried 4 years previously and sentenced to imprisonment for life, the same sentence was passed upon him; *N. A. R. vol. 4, page 328*. On conviction of being an accessory after the fact in assisting to carry off the body of the person murdered and in concealing his knowledge of the fact, the prisoner was sentenced to 14 years' imprisonment in banishment; *N. A. R. vol. 2, page 372*:—a prisoner convicted of privy to murder and concealing his knowledge thereof was sentenced to imprisonment for

Accessory before
the fact sentenced
capitally.

Cases in which
none of the prison-
ers were sentenced
as principals.

Accessories after
the fact and privy.

7 years; *N. A. R. vol. 4, page 54*:—two prisoners, convicted of privity to murder after the fact and clandestine disposal of the body, were sentenced to 3 years' imprisonment; *N. A. R. vol. 4, page 302*;—two prisoners convicted of concealment of murder and throwing the body of the murdered person into the river were sentenced to 2 years' imprisonment; and two more, one as an accomplice in the concealment, and the other a chokeedar for not giving information after having seen the corpse, to imprisonment for one year; *N. A. R. vol. 4, page 2*.

Chokeedar guilty of privity.

3979. On conviction of the murder of a child for its ornaments, the prisoner has generally been sentenced to death; *N. A. R. vol. 1, pages 16, 18, 33, 43, 70, 72, 75, 76, 102, 119, 139, 152, 162, 185*; *vol. 3, page 311*; *vol. 4, page 182*; and *vol. 6, page 202*:—so, when the evidence was only circumstantial; *N. A. R. vol. 4, page 305*:—so, when the prisoner was only 20 or 18 years of age; *N. A. R. vol. 4, page 265*; *vol. 5, page 178*. When the conviction was only of assault with intent to murder, the prisoner was sentenced to transportation for life; *N. A. R. vol. 1, pages 48, 332, 351*; *vol. 2, pages 418, 479*; *vol. 3, page 342*; and *vol. 4, page 79*:—where the body was not found, the sentence was for imprisonment for life; *N. A. R. vol. 2, page 489*:—and so, where the prisoner was convicted on violent presumption of having made away with the child, he was sentenced to imprisonment until the fate of the child should be ascertained, or it be proved that he died by means not implicating the prisoner; *N. A. R. vol. 1, pages 226, 305*; *vol. 3, page 122*; *vol. 4, pages 47, 136, 327*. Where the prisoner was (apparently) less than 18 years of age, he was sentenced to imprisonment for life; *N. A. R. vol. 5, page 53*; and so, where his age was respectively 9, 16, 14, 13; *N. A. R. vol. 1, page 213*; *vol. 2, pages 145, 471*; and *vol. 3, page 179*:—in two cases, where the prisoner was 13 or 14 years of age, the sentence was for transportation for life; *N. A. R. vol. 1, page 215*; and *vol. 2, page 2*:—and in one case, in accordance with the futwa, a boy aged 12 was sentenced to 30 stripes and imprisonment for 5 years; *N. A. R. vol. 1, page 148*:—where the proof was presumptive only a boy aged 15 was sentenced to imprisonment for 10 years; *N. A. R. vol. 2, page 20*. The accomplice in one case, as well as the principal, was sentenced to death; *N. A. R. vol. 1, page 75*:—accessary after the fact sentenced to transportation for life; *N. A. R. vol. 6, page 264*:—where the principal was capitally sentenced, and his accomplice was a lad of 12 or 14 years, the latter in consideration of his youth was sentenced to imprisonment for 7 years; *N. A. R. vol. 4, page 305*:—where the prisoner was convicted of being an accomplice but not actually concerned in the murder, for which the principal was condemned to death, he was sentenced to imprisonment for 5 years; *N. A. R. vol. 1, page 33*:—a boy aged 9 years convicted of aiding his mother in the murder, for which she was capitally sentenced, was discharged without punishment in consideration of his extreme youth; *N. A. R. vol. 1, page 152*:—three prisoners convicted of being privy to the murder and accessaries after the fact were sentenced to 39 stripes and imprisonment in banishment for 7 years; *N. A. R. vol. 1, page 168*:—prisoner convicted of being privy to the murder and concealing his knowledge thereof was sentenced to imprisonment for 5 years; *N. A. R. vol. 3, page 73*.

Murder of children for their ornaments.

Sentence of death.

Sentence of imprisonment for life, where intent to murder was not proved;

where the body was not found;

on violent presumption.

Cases of prisoners under 18 years of age.

Accessaries;

and privity.

3980. A father, convicted of killing his child from anger against another person, was sentenced to death; *N. A. R. vol. 1, page 370*; *vol. 2, page 446*:—so a mother;

Murder of children

from other motives.

Sentence of death.

Sentence of imprisonment for life.

By a mother acting on sudden impulse.

Discovery of bones not sufficient finding of body.

Body not found.

Murder to obtain property.

Sentence of death.

N. A. R. vol. 3, page 288 :—so, a mother on a quarrel with her husband; *N. A. R. vol. 2, pages 27 and 146*:—so, when the prisoner murdered a child from revenge against its mother; *N. A. R. vol. 1, pages 4 and 313*:—prisoner convicted of the murder of his infant nephew without apparent malice or motive, and sentenced to death; *N. A. R. vol. 2, page 344*:—prisoner convicted of the murder of two children and wounding another and two other persons, where the only assignable motive was that he had lost his situation of village chokeedar, was sentenced to death; *N. A. R. vol. 3, page 268*. A mother, convicted of the murder of her child, apparently under the influence of frenzy at the loss of her two other children who were accidentally drowned, was sentenced to imprisonment for life; *N. A. R. vol. 1, page 382*:—so, a mother convicted of throwing herself and her two children into a well, which caused the death of the youngest child, apparently under the influence of sudden anger excited by a previous altercation with her husband; *N. A. R. vol. 2, page 55*:—so, a mother convicted of the murder of her infant, impelled by starvation and extreme distress, which was considered a sufficient ground for mitigation of punishment; *N. A. R. vol. 4, page 311*. Where a mother in a sudden fit of passion threw her child into a well, by which it was drowned, she was sentenced in consideration of the sudden impulse under which she had acted and the absence of all malice towards the child, to imprisonment for 10 years; *N. A. R. vol. 2, page 375*. Where the prisoner was convicted on his own confession of the murder of his master's child without any discoverable motive, but the bones which he pointed out could not be identified, it was held that this was not a sufficient finding of the body, and he was sentenced to imprisonment for life in Alipore jail; *N. A. R. vol. 2, page 82*:—so, where the prisoner was convicted, on strong presumption, of having murdered a boy, 12 years of age, for the sake of some rupees which were on his person, and the police officers had not seen the dead body, though certain witnesses deposed to having seen it with the throat cut, capital punishment was remitted, and he was sentenced to imprisonment for life in the Alipore jail; *N. A. R. vol. 3, page 8*.

3981. Prisoner convicted on circumstantial evidence of the murder of his master, and his master's wife and mother, for their property, and sentenced to death; *N. A. R. vol. 1, page 165*:—so, in a similar case, when the futwa convicted of privy only; *N. A. R. vol. 3, page 19*:—so, the dying declaration before the neighbours of one of the two murdered individuals, the facts of his having quitted the house in which the murdered persons were by his own acknowledgement at the time of the murder, of his not returning home till the succeeding night, of his clothes being found stained with blood along with a bloody dao a short distance from the house, and of his own statement being disproved by circumstances, were held to furnish sufficient presumptive proof on which to found a capital sentence against the prisoner, as guilty of the murders charged, although he took away none of the property, the acquiring possession of which was the only apparent motive for the crime; *N. A. R. vol. 3, page 131*. Where the wounded person survived the infliction of the wounds for two months, but the intent to kill was clearly proved, the principal was sentenced to death, and another as accessory after the fact, and for receiving the stolen property, to imprisonment for 7 years; *N. A. R. vol. 4, page 243*. Where the apparent motive of the murder was to obtain property,

and the prisoner alleged that he had committed it on the promise of a reward of 40 rupees, he was capitally sentenced; *N. A. R. vol. 1, page 90*:—so, in other cases of murder to obtain money or goods; *N. A. R. vol. 1, pages 34, 137*; *vol. 2, pages 104, 257*;—and in prosecution of robbery or theft; *N. A. R. vol. 1, pages 54, 202*; *vol. 2, page 103*; *vol. 4, page 169*. Sentence of imprisonment for life was passed in two cases merely on account of a difference of opinion among the judges of the nizamat adawlut; *N. A. R. vol. 2, pages 384 and 485*: and where the proof was only presumptive; *N. A. R. vol. 3, pages 11 and 227*. Where the prisoner was one of the rude race of people in the north of Cachar, he was sentenced to transportation for life; *N. A. R. vol. 5, page 8*. One prisoner convicted of being an accomplice in the murder was sentenced to imprisonment for life, two others of being accessaries after the fact and receiving part of the stolen property to imprisonment for 14 years, and two of being accessaries after the fact and concealing their knowledge thereof to imprisonment for one year; *N. A. R. vol. 5, page 186*. Two prisoners convicted on their mofussil confessions supported by strong circumstantial evidence, were sentenced to transportation for life, notwithstanding the verdict of acquittal by the jury; *N. A. R. vol. 6, page 14*. On conviction of privity to murder and theft and receiving the ornaments of the deceased, the prisoner was sentenced to 7 years' imprisonment; *N. A. R. vol. 4, page 275*.

Sentence of imprisonment for life.

Accessaries.

Convicted in spite of acquittal by jury.

Privity.

Acquittals on charge of

3982. The following cases are reported in which the prisoners have been acquitted from the insufficiency or contradictory nature of the evidence; *N. A. R. vol. 1, pages 2, 170*; *vol. 2, pages 158, 194, 318, 345*; *vol. 3, pages 3, 192*; *vol. 4, pages 60, 228, 248, 287*:—so, where there was not sufficient proof to fix the act on either of the prisoners, though, from circumstances connected with the case, not a doubt existed but that one of them must have perpetrated the deed; *N. A. R. vol. 1, page 267*:—so, where the deceased was found hanging to a beam in her house in the middle of the day, with evident marks of having been ravished and strangled, the only evidence against the prisoner being that he was seen running from the house shortly before in a state of agitation; *N. A. R. vol. 2, page 460*:—so, where the evidence against the deceased consisted chiefly in his being the last person seen in company with the deceased, whom he had an obvious interest in surviving for the sake of certain property which he would succeed to; *N. A. R. vol. 3, page 27*:—so, when the circumstantial evidence consisted of enmity between the prisoners and deceased; threats used by the prisoners; and concealment of and denial of the possession of any weapon; *N. A. R. vol. 2, page 271*:—so, though marks of strangulation and other indications of violence were found on the body, the prisoner's contradictory statements, first that she had run away, and then that she had hanged herself, were not deemed sufficient evidence for conviction; *N. A. R. vol. 2, page 350*:—so, where the prisoner pointed out the spot where he had buried his bastard child, after having denied all knowledge of it; *N. A. R. vol. 3, page 47*:—so, the dying declaration of the murdered person, and the circumstances of a weapon being found near the prisoner exactly corresponding with the wound inflicted on the deceased, were held insufficient for conviction; *N. A. R. vol. 3, page 66*:—so, the prisoner's having been indicated by the murdered boy, together with the fact of his having been found near the spot where the boy was lying, his flight from thence on the neighbours

Where the general nature of the evidence was insufficient, or contradictory; and what amount of circumstantial evidence has in particular cases been considered insufficient.

coming up, and his accusation when seized of another individual, were not held to constitute sufficient proof of his guilt; *N. A. R. vol. 3, page 143* :—so, the circumstance of the prisoner being alone in the house with his wife when she was discovered in a dying state from wounds on her person, was held insufficient to establish the charge against him, though, from the nature and position of the wounds, it was impossible that they could have been self-inflicted; *N. A. R. vol. 3, page 327* :—so, notwithstanding strong presumptive evidence, where the murdered person declared that she did not know who her murderer was; *N. A. R. vol. 4, page 232*. The prisoner was acquitted of the murder of a child for the sake of its ornaments, when one of the two witnesses against him was his own wife, and the evidence was otherwise unsatisfactory; *N. A. R. vol. 3, page 10* :—so, where the principal witnesses against the prisoner were his wife and a lad 14 years of age, the court acquitted him, adverting to some discrepancies in the evidence of the former and to the youth of the latter; *N. A. R. vol. 4, page 261*. It was deemed sufficient ground for acquittal that the witnesses had been harshly treated by the police to force them to give their depositions; *N. A. R. vol. 5, page 81*. Two prisoners were acquitted, notwithstanding the confession of No. 2 that he was present when No. 1 committed the murder; the presumption being that the deceased was killed by the villagers, while in the act of committing theft with the prisoners; *N. A. R. vol. 2, page 163*.—Where the prisoner endeavoured to conceal a murder perpetrated by his wife by obstructing the police officers in their search for the body, and thus in the strict sense of the word became an accessory after the fact, but nothing else appeared against him, his act was deemed the result of natural feeling, and he was acquitted; *N. A. R. vol. 1, page 137*.—Where the prisoners pursued two boys who had allowed their cattle to stray on the prisoner's fields, and the boys fled towards the river in which they were found drowned the next day, it was held that no crime was established against the prisoners; *N. A. R. vol. 3, page 361*.

Husband accessory after the fact to murder committed by wife, not punished.

Accidental death.

Killing thieves.
General principle.

If blows were inflicted after thieves were secured;

3983. Where a person is killed under the supposition that he is a thief, and in the act of stealing or about to steal, the only question for consideration is whether in killing him the prisoners were guilty of any unnecessary violence or cruelty. If they were, the homicide cannot be said to be justifiable. If, on the contrary, they were only defending their property, and in so doing without premeditation or unnecessarily repeated blows the deceased was deprived of life, the act would not be criminal; *Reports W. P. 1852, page 730*. In the Mahomedan law there is no allowance made for a person slaying a robber, after he has been taken into safe custody; and such homicide incurs the penalty of wilful murder. Where the prisoner was found guilty of this offence, he was sentenced to imprisonment for life; *N. A. R. vol. 1, page 249* :—and where previous enmity existed, to death; *N. A. R. vol. 5, page 119* :—where the prisoners appeared to have committed the crime through ignorance, they were sentenced according to their respective degrees of guilt to imprisonment for 14, 7, and 5 years; *N. A. R. vol. 3, page 267* :—When the prisoners have been guilty of unnecessary violence, after the thief has been secured, the sentence of imprisonment has varied according to the circumstances of the case from two years to seven; *N. A. R. vol. 2, pages 262, 461*; *vol. 4, page 38*; *vol. 5, page*

122; *vol. 6, page 160*; *Reports W. P. 1852, pages 512 and 730*; *Reports L. P. 1854, part 1, page 156*. Where the prisoner struck a thief in the act of stealing with a dangerous weapon without any previous endeavour to apprehend him, he was sentenced to imprisonment for one year; *N. A. R. vol. 2, page 322*. In a similar case, it was held that the imprisonment endured pending trial was sufficient; *Reports W. P. 1853, part 1, page 356*. And where the prisoner found the deceased in the act of stealing, and pursued him when he ran away wounding him thirteen times as he ran until he dropped, of which wounds he died after 26 days, no punishment was inflicted because no wound was given after the thief had fallen; the court observing that a person is not criminally punishable for not having exhibited forbearance and self-command in his endeavour to secure a thief under the excitement of the moment; *Reports W. P. 1853, part 1, page 804*. But where the injuries inflicted on the thieves by their pursuers were so unnecessarily severe as to cause immediate death, the prisoners have been sentenced to imprisonment for 5 years, and an accessory after the fact for 2 years; *Reports W. P. 1854, part 2, page 721*; and *L. P. 1855, part 2, page 982*:—and in a less aggravated case, for 18 months with fine in lieu of labor; *Reports W. P. 1852, page 730*. Where however the prisoners, apparently chokeedars, found two persons emerging from the hole by which a house had been burglariously entered, and struck them repeated blows with a battle-axe and an iron-bound club, of which injuries they immediately died, the court passed sentence of imprisonment for 10 years; *N. A. R. vol. 5, page 142*. Where the homicide was committed on the thief resisting and attacking the prisoner, or where the thief was found in the actual commission of the offence and killed on the spot, the prisoner was acquitted; *N. A. R. vol. 1, page 22*; *vol. 4, page 197*; *vol. 5, pages 44, 150*; *vol. 6, page 231*; *Reports W. P. 1852, page 1318*. The prisoner visiting his field at night found some thieves in the act of stealing the crop: finding himself confronted by one of them armed with a weapon no less dangerous and deadly than the one which he himself carried, the prisoner thrust at him with his spear, and the wound proved fatal: held that he was justified; *Reports W. P. 1853, part 1, page 358*.

or if the violence used in effecting apprehension has been unnecessarily severe.

Homicide held justifiable.

3984. In the reported cases of the murder of persons under the idea that they practised witchcraft, the sentence has varied from imprisonment for life to imprisonment for 7 years; but the reasons which have induced this inequality of punishment are not recorded; *N. A. R. vol. 2, pages 56, 188, 196*; *vol. 3, page 102*; *vol. 4, pages 128, 221, 224*; *vol. 5, pages 19, and 35*; *vol. 6, pages 268, and 327*:—where the murder was committed under strong provocation, and the murdered person professed the art of witchcraft in order to extort money, the prisoner was sentenced to imprisonment for only 3 years; *N. A. R. vol. 1, page 318*. Two prisoners, one the husband and the other the son of the deceased, convicted, the first of murdering her, and the second of being an accomplice in the murder, from vexation at the constant imputations against her of being a witch, were sentenced, the former to transportation for life, and the latter to imprisonment for 14 years. *N. A. R. vol. 6, page 244*. All these cases, with the exception of the two last quoted, occurred in the least civilized parts of the country, Chota Nagpore, Kumaon, and among the Garrows.

Killing sorcerers.

Where the prisoners were actuated by superstition.

Where the deceased professed witchcraft.

Where the deceased was accused of witchcraft, and the prisoners, her husband and son, were vexed by the imputation.

- Killing by poison.**
Sentence of death.
3985. A prisoner convicted of murder by poison, in revenge for removal from the superintendence of a religious endowment, and to recover possession thereof, was sentenced to death; and three persons convicted of privity to the murder to imprisonment for one year; *N. A. R. vol. 1, page 58*. Sentence of death was passed on a prisoner convicted of the murder of a rival wife by poison; *N. A. R. vol. 2, page 347*: so, where the prisoner was convicted of the murder by poison of two persons, and endangering the lives of 14 others who partook of the poisoned food, with whom his master was at enmity; *N. A. R. vol. 1, page 334*: so, where the prisoner murdered his master by poison apparently with a view of emancipating himself from slavery, to which he had bound himself by a regular deed; *N. A. R. vol. 2, page 19*. Where it was clearly shown that the two prisoners administered poison with the intent to kill, but there was a doubt whether the poison actually caused the death, the sentence was for imprisonment for life; *N. A. R. vol. 2, page 156*:—so, where a wife mixed some kachla (*nux vomica*) with her husband's food with intent to kill him, but the husband disliking the taste refused to eat the dinner; *N. A. R. vol. 4, page 123*. Where the poisoned food was prepared, but not administered, and the prisoner declared that his object was to produce a temporary derangement of the faculties and not death, he was sentenced to imprisonment for 10 years; *N. A. R. vol. 2, page 281*:—where the prisoner, a girl of 12 years of age, was convicted of culpable homicide of her husband by administering poison to him but without intent to kill, she was sentenced to imprisonment for 7 years; *N. A. R. vol. 3, page 236*. The prisoner was acquitted, where the evidence was insufficient; *N. A. R. vol. 2, page 213*:—where the drug administered was not poison, and the court was not satisfied with the truth of the prisoner's confession before the magistrate, notwithstanding that the *futwa* convicted her of administering a drug which she conceived to be poison: *N. A. R. vol. 1, page 307*:—and where it seemed probable, that the deceased died from excessive drinking rather than that the wine was poisoned; *N. A. R. vol. 2, page 368*.
- Intent to kill, but homicide not effected.
- Without intent to kill.
- Acquittal.
- Human sacrifice.**
3986. Where the prisoners were convicted of wilful murder, under strong grounds for presuming that the murder was intended as a human sacrifice, they were sentenced to death; *N. A. R. vol. 1, page 13*; *vol. 4, page 117*. Four Garrows, convicted of murdering two women for the purpose of obtaining their heads, which were required by one of their countrymen for some superstitious ceremony, were sentenced to death; *N. A. R. vol. 5, page 164*. Three prisoners convicted, on violent presumption, of the murder of a boy for the performance of an incantation, were sentenced to imprisonment for life; *N. A. R. vol. 3, page 209*. Three inhabitants of the Jyntea territory, convicted of having, at the instigation of the brother-in-law of the raja of that country, forcibly seized a boy in the British territory, for the purpose of offering him up as a sacrifice to the Hindoo idol Kalee, the boy being rescued, were sentenced to imprisonment in banishment for 14 years; *N. A. R. vol. 2, page 108*. Of six prisoners, of a tribe of Reangs in Chittagong, convicted of the human sacrifice of three Kookies, four were sentenced to death, and two to transportation for life; *Reports L. P. 1852, part 1, page 899*. Where two persons went to a shrine dedicated to Mahadeo for the purpose of offering up their heads, and one of them cut off the head of
- With the consent of the person sacrificed.

the other, and tried ineffectually to cut his own throat, he was sentenced to transportation for life; *Reports W. P.* 1854, *part 1*, *page 762*.

3987. A prisoner, convicted of destroying his infant daughter, was sentenced to death; but as it appeared that the proclamation for restraining the murder of new-born children, directed by sect. 11, Reg. III. 1804, had not been published in the *pergunnah* in which the prisoner resided, and as the magistrate had but recently interfered in the police of the *pergunnah*, so that it was not improbable that he might have been ignorant of the prohibition of the British government, the court recommended government to pardon him, which was sanctioned; *N. A. R. vol. 1*, *page 209*. A prisoner charged with the murder of his female infant was acquitted, as the only evidence against him was his confession, which he stated to be untrue and obtained by violence, and as there was no proof of the birth of the child; *N. A. R. vol. 1*, *page 143*. It was held a presumption in favor of the prisoner that the child was 10 months' old at the time of its death; *Reports W. P.* 1856, *part 1*, *page 37*.

Female infanticide.

3988. On conviction of destroying, or exposing with intent to destroy, new-born illegitimate children, the mother has been sentenced to imprisonment for life; *N. A. R. vol. 2*, *pages 161 and 226*; and *vol. 4*, *page 108*; or to imprisonment for 7 years; *N. A. R. vol. 1*, *page 363*; *vol. 3*, *page 83*; and *vol. 5*, *page 177*;—but the reports of these cases are not sufficiently full to show the grounds of distinction in awarding punishment. Where the prisoner had made a previous attempt upon her infant's life, and it was afterwards found drowned under circumstances bearing strongly against the prisoner, but she herself reported its death to the police, and denied having caused it, and no witness saw it accomplished, she was acquitted; *N. A. R. vol. 3*, *page 225*.

Killing or exposure of infants.

3989. Two prisoners were convicted of administering drugs to a pregnant woman with a view to procure abortion in consequence of which she was delivered of a perfectly formed child born dead, and of having conveyed away the woman, so that no intelligence had been since received regarding her; and were sentenced to imprisonment for life; another prisoner convicted of aiding and abetting in the above crime was sentenced to imprisonment for 7 years; the midwife who delivered her died during the trial; *N. A. R. vol. 3*, *page 269*. Prisoners convicted of causing the death of a pregnant woman in an attempt to procure abortion, sentenced to imprisonment for 7 years; *N. A. R. vol. 2*, *page 335*. *Reports L. P.* 1852, *part 1*, *page 910*. Where the prisoner was convicted of taking a potion, when in an advanced state of pregnancy, with the intention of causing abortion, in consequence of which the premature birth of a child was occasioned, she was sentenced to imprisonment for two years: in this case the court of circuit found her guilty also of causing the death of her infant subsequently by exposure, but this was held to be a conviction of a greater offence than that charged; and that it was an essentially distinct charge, and therefore might still be proceeded on, if thought proper, notwithstanding the charge and conviction of procuring abortion; *N. A. R. vol. 3*, *page 56*. Where the prisoner was convicted of causing drugs to be administered to a pregnant woman for the purpose of procuring abortion, but there was no proof that her death was occasioned by the drugs, he was sentenced to imprisonment for

Procuring abortion.

Where the means used caused the death of the woman.

Where the woman knowingly caused abortion in herself.

Punishment for attempt.

Where the foetus was not quick.

6 months; *N. A. R. vol. 4, page 29*. Where the prisoner, not quick with child, was convicted of destroying the foetus in her womb, the court deemed the 6 months' imprisonment, which she had undergone, a sufficient punishment; *N. A. R. vol. 2, page 464*. In a similar case the same punishment, imprisonment for 6 months, was awarded to the woman who took, and to the paramour who administered, the drugs which caused the abortion of a foetus yet imperfect and without life; *Reports W. P. 1853, part 2, page 822*.

Where premature labor and death of infant were caused by assault.

3990. When a woman, eight months gone with child, was assaulted and kicked, and was shortly afterwards delivered of a child which immediately died, and her own death followed in a few days occasioned by premature labor brought on by the external injuries received in the assault; the principals were sentenced to imprisonment for 5, 4, and 3 years. *Reports L. P. 1852, part 1, page 554*.

Culpable homicide.

Of wife; on account of her loss of honor, or of her adulteries,

for running away;

for refusal of marital rights,

in anger;

in attempt to consummate marriage.

In revenge for adultery with wife, or attempt to commit such.

3991. Where the prisoner put his wife to death at her own request, in consequence of her loss of honor from having been violated by several persons, it was held to be culpable homicide, and he was sentenced to imprisonment for 5 years; *N. A. R. vol. 1, page 1*:—where the prisoner confessed that he found his wife in adultery, and in a rage went to a near neighbour's house for a razor, with which he cut her throat, he was sentenced to imprisonment for 7 years; *N. A. R. vol. 2, page 235*:—where the prisoner provoked by his wife's adultery and personal abuse killed her by striking her on the head with the handle of a hatchet, and afterwards in jail made a violent assault on her paramour, he was sentenced to imprisonment for life; *N. A. R. vol. 1, page 5*. On conviction of aggravated culpable homicide from beating his wife, 12 years of age, severely with a large piece of wood and kicking her, for running away to her father's house, of which she died the next morning, the prisoner was sentenced to imprisonment in banishment for 14 years; *N. A. R. vol. 3, page 329*:—the same sentence was passed, when the prisoner strangled his wife under the impulse of sudden passion from her continued refusal to have connection with him; *N. A. R. vol. 3, page 275*:—and so, when in sudden anger on slight provocation the prisoner gave his wife a severe blow on the head from the branch of a tree of which she died ten days after; *N. A. R. vol. 3, page 360*:—and so, when the prisoner killed his wife by one blow of a club which fractured her skull, from some unknown motive; *N. A. R. vol. 4, page 225*:—where the prisoner, in sudden anger from refusal of his wife to return home with him from her uncle's house, snatched up two bamboos and beat her severely, of which she died the following night, he was sentenced to imprisonment for 5 years; *N. A. R. vol. 1, page 231*. A prisoner convicted of culpable homicide of his wife in the attempt to consummate marriage, for which she was too young, probably from making use of some instrument, (the offence being punishable under the Mahomedan law, if death be the result of the first attempt at connection) was sentenced to 14 years' imprisonment; *N. A. R. vol. 6, page 29*.

3992. A prisoner, convicted solely on his own confession of having killed his nephew, who had committed adultery with his wife, was sentenced to 7 years' imprisonment, as though he confessed that the act was premeditated, yet the means used were only two blows with a moderately sized stick, and the meeting with the deceased was accidental; *N. A. R. vol. 2, page 32*:—so, where the prisoner, in sudden irritation, killed with one

blow of a moosul a person whom he believed to have carried on a criminal intercourse with his wife, and who came to his house notwithstanding the prohibition of the prisoner; *N. A. R. vol. 3, page 351*;—where the deceased was found in the prisoner's house at night with an adulterous intent, notwithstanding previous warning, and they beat him to death with their sticks, the intent to kill not being apparent, they were sentenced to imprisonment for 5 years; *N. A. R. vol. 2, page 395*;—in a similar case the prisoners were sentenced to imprisonment for 3 years, 2 years, and 1 year respectively; *N. A. R. vol. 4, page 279*. Where the deceased detected the prisoner in criminal intercourse with his wife, and immediately killed his wife and attacked the prisoner, who killed him in self-defence, the sentence passed was imprisonment for 2 years; *N. A. R. vol. 1, page 39*. Where the prisoner, a peon in the salt department, killed a person, whom he had illegally arrested, on his attempt to escape, he was sentenced to imprisonment for 14 years; *N. A. R. vol. 3, page 222*;—in a similar case, when the arrest was equally illegal, but the blow given to prevent escape was evidently not intended to produce death, the prisoner was sentenced to imprisonment for 2 years; *N. A. R. vol. 1, page 321*. Where the prisoner, a peadah of the civil court, permitted the decreeholder and others to maltreat the deceased, for whose arrest he held an order of the court, and whose death was caused by the maltreatment, he was sentenced to imprisonment for 2 years and a fine in lieu of labor; *N. A. R. vol. 6, page 192*. Where the prisoner killed a person, who was endeavouring to arrest him illegally, his offence was held to be culpable homicide; and, as he had displayed inexcusable ferocity in the act, he was transported for life; *Reports W. P. 1854, part 1, page 32*. Where a person illegally arrested, without judicial process, killed the person who sought to detain him, he was sentenced to imprisonment for 2 years; *N. A. R. vol. 1, page 69*. Where the first prisoner was convicted of killing a police officer and wounding another person, under circumstances of extreme provocation, and the other was convicted of aiding and abetting (the prisoners, their father, and brother, having been apprehended by the police officers on a false charge of highway robbery, the father killed and one of the brothers wounded by the police), the first prisoner was sentenced to imprisonment for 3, and the second for 2 years; *N. A. R. vol. 3, page 54*. Where the prisoner had wounded a burkundaz, who was endeavouring to arrest him immediately after he had wounded another person, and the burkundaz died after eight days from the effects of the wounds, the offence was held to be murder; but under the circumstances of the case he was transported for life; *Reports W. P. 1854, part 1, page 290*. But where a thief killed with a sword a police chokeedar who went to arrest him, he was condemned to death; *Reports W. P. 1854, part 2, page 361*. Where the prisoners went with an armed party to recover a lost or stolen bullock, and a scuffle ensued, in which one of the assailants was killed, it was held that they were responsible for the consequences which ensued from pursuing a legal object by illegal means, and were sentenced to 5, 4, and 3 years' imprisonment respectively; *Reports W. P. 1854, part 2, page 729*. A sepoy convicted of shooting a person in a disturbance in a village, in consequence of the deceased coming forward to rescue his father, whom the prisoner with other sepoys had illegally seized, was sentenced to imprisonment for life; *N. A. R. vol. 2, page 413*. Where

By a person illegally arresting, to prevent escape.

By a person illegally arrested.

Pursuing legal object by illegal means.

In disturbances caused by attempts to exact forced service from individuals.

one of the prisoners attempted to force the deceased to carry a bundle, and he resisted, and the villagers endeavoured to rescue him, and in the scuffle which ensued the other prisoner killed the deceased with his sword, the latter was sentenced to imprisonment for 7 years, and the former for 2 years and stripes; *N. A. R. vol. 1, page 63*:—where the prisoner seized the deceased to act as a begar, and he in endeavouring to escape accidentally* fell into a well and was drowned, the prisoner was sentenced to 5 years' imprisonment; *N. A. R. vol. 2, page 396*:—where a sepoy beat a man with a stick and his fists so as to cause his death for refusing to do service as a begar, he was sentenced to imprisonment for 3 years; *N. A. R. vol. 2, page 469*. Where a sepoy seized a villager to act as a guide, and the other villagers came to his rescue, and the sepoy fired among the crowd whereby a boy was killed, he was sentenced to imprisonment for 5 years; *N. A. R. vol. 2, page 334*;—in a similar case, the prisoner was sentenced to imprisonment for 3 years; *N. A. R. vol. 1, page 209*. Where it appeared from circumstantial evidence that his wife had died from the effects of violence used towards her by the prisoner, without intent to injure seriously, he was sentenced to imprisonment for 2 years; *N. A. R. vol. 1, page 174*. Where the prisoner killed the deceased in a dispute by firing at him a gun loaded with seed in which a single shot appeared to have been mixed, he was sentenced to imprisonment for 7 years; *N. A. R. vol. 5, page 6*.

* See next para.

Where intent to injure seriously was not shown.

Where death was caused by a fortuitous circumstance, distinct from, but the direct consequence of, the assault.

3993. Where a woman, running away from her husband who had beaten her, accidentally fell over a log of wood, and she died very shortly afterwards; and it appeared that her death was caused by the injuries received from the fall, the prisoner was punished for the assault only. As regards the question how far a man doing an illegal act is responsible for the consequences, and with reference to a case cited in England, the court observed that undoubtedly where a man dies under the best available medical treatment, which has been the direct and necessary consequence of a wound inflicted on him, the party who inflicted the wound remains answerable for the death, though arising immediately from the medical treatment. But when the cause of death is wholly from a supervenient accident, as from falling over a log of wood, or into a well, in running away from an assault, a conviction of culpable homicide cannot be sustained against the party who committed the assault. The death was the result of a fortuitous circumstance, distinct from the act for which he was responsible. *Reports L. P. 1851, page 1365. See para. 3921.*

In sudden anger, or momentary irritation:—sentence of imprisonment for life;

for 14 years;

3994. Where the prisoner in sudden anger and on provocation killed a woman with whom he had cohabited, and afterwards despoiled her of the jewels which she wore and left the body, he was sentenced to imprisonment for life; *N. A. R. vol. 2, page 200*:—so, where the prisoner in sudden anger and on provocation knelt down by the side of a boy who was asleep and deliberately killed him; *N. A. R. vol. 3, page 62*:—where the prisoner killed a woman by striking her on the head with an iron-bound lathi under momentary irritation, he was sentenced to imprisonment for 14 years; *N. A. R. vol. 3, page 265*:—so, where the act was committed in sudden heat and passion, after what had possibly been the most serious provocation; *N. A. R. vol. 6, page 196*—so, where the prisoner killed the

deceased by a blow from a club on sudden irritation at being accused of cattle-stealing; *N. A. R. vol. 3, page 289*:—where the prisoner in sudden anger killed a man by a kick on the testicles, he was sentenced to 10 years' imprisonment; *N. A. R. vol. 4, page 37*. Where the prisoner killed an old man in a quarrel by striking him with his fist, he was sentenced to imprisonment for 7 years; *N. A. R. vol. 3, page 304*;—where the prisoner in the heat of a quarrel ran into her house, and having brought out a baitha struck an old woman with the edge of it over her nose and killed her on the spot, she was sentenced to imprisonment for 7 years; *N. A. R. vol. 4, page 143*;—so, where the prisoner in sudden anger ran after the deceased and struck him twice with a sword, of which wounds he died; *N. A. R. vol. 1, page 115*; *vol. 4, page 82*;—so, where the prisoner in a dispute struck the deceased with a club on the head, which caused his death sixteen days afterwards; *N. A. R. vol. 2, page 187*;—so, where the prisoner in a violent dispute struck the deceased three blows on the head and mouth, of which she died almost immediately; *N. A. R. vol. 1, page 112*;—so, where the prisoner killed the deceased in sudden irritation during sickness; *N. A. R. vol. 3, page 176*:—so, where the prisoner killed his own child in a fit of ungovernable passion at ill-treatment and oppression by a third party; *N. A. R. vol. 1, page 177*.—Where the prisoner in sudden passion, but without any intention to kill her, squeezed his wife's throat so violently as to occasion her death almost immediately, he was sentenced to imprisonment for 5 years; *N. A. R. vol. 1, page 110*;—so, where the prisoner, who was bed-ridden, threw a stool at his wife, which struck her on the head and killed her on the spot; *N. A. R. vol. 2, page 155*;—so, where a zumeendar required the services of the prisoners, his tenants, and they abused him, and he held up his shoe as if to strike them, and they committed an assault upon him which occasioned his death; *N. A. R. vol. 2, page 268*;—so, where the prisoner killed by a blow on the head a person with whom his master was struggling; *N. A. R. vol. 2, page 307*. Where in a sudden quarrel and family affray the prisoner struck the deceased and he died from the injuries received, the sentence was imprisonment for 4 years; *N. A. R. vol. 5, page 28*. In other cases where the homicide has occurred in a sudden quarrel the prisoners have been sentenced to imprisonment for one year, or 6, or 3 months; *N. A. R. vol. 2, page 106*; *vol. 1, pages 328 and 193*.

3995. Where the deceased in a sudden quarrel struck the prisoner, and the latter seized a club and killed him by repeated blows, he was sentenced to imprisonment for life; *N. A. R. vol. 4, page 150*:—where a wife on a quarrel wounded her husband, and the latter seizing the knife stabbed her so that she died of the wound, he was sentenced to imprisonment for 14 years; *N. A. R. vol. 3, page 207*:—where the deceased allowed the cattle he was tending to stray into the prisoner's field, and the latter struck him with a club, which killed him on the spot, imprisonment for 7 years was considered a sufficient punishment; *N. A. R. vol. 3, page 75*;—so, where the deceased, an old woman, first struck the prisoner, and he struck her two violent blows with a heavy log of wood which killed her; *N. A. R. vol. 3, page 363*. In other cases where the homicide has occurred in sudden quarrel on provocation given by the deceased, the sentence has been for 5 years; *N. A. R. vol. 1, pages 49 and 136*; *vol. 2, page 256*; *vol. 4, page 14*;—for 4 years; *N. A. R. vol. 3, page 291*;

In a sudden quarrel in which the person killed was the aggressor.

On provocation
of abuse.

—for 3 years; *N. A. R. vol. 1, page 290*;—for 2 years; *N. A. R. vol. 2, page 423*;—and for one year; *N. A. R. vol. 1, page 31*; and *vol. 3, page 300*. Where the prisoner had received prolonged vexatious treatment and immediate provocation from the deceased, and snatched a bamboo from the hand of the deceased, and in self-defence and on the spur of the moment felled him with a blow on the temple, he was sentenced to 1 year's imprisonment with fine in lieu of labor. The court observed that the severity of the blow, the place struck, and the use of the weapon (the bamboo with both hands) alone rendered the retaliation culpable; *Reports L. P. 1855, part 2, page 48*. Where the prisoner on the provocation of abusive language assaulted the deceased with an evident intent to kill, but in sudden heat of blood, he was sentenced to imprisonment for life; and Mr. Macnaghten adds in a note; "Under the stated circumstances of this case, it is probable that the prisoner, having on provocation from words only assaulted and wounded the deceased with a manifest intent to kill him, and having thereby occasioned his death, would, if tried by an English jury, have been convicted of murder. But verbal abuse, which is often of the grossest nature amongst the natives of India, and is extremely offensive, especially to persons of the prisoner's caste, amounts to a high provocation in this country; and it is consonant to the spirit of the English law, as well as to the general principles of justice, to make a distinction of punishment between cases of deliberate murder, and sudden homicide committed in heat of blood;" *N. A. R. vol. 1, page 53*. So, when the prisoner killed his mother under the sudden provocation of gross verbal abuse; *Reports W. P. 1854, part 1, page 44*. Where the prisoner and deceased met in their way to the house of a woman, with whom they both had a criminal intercourse, and there ensued a quarrel which began in abuse and ended in a mutual struggle in which the deceased was strangled, the prisoner was sentenced to imprisonment for 3 years; *N. A. R. vol. 1, page 123*:—where in a quarrel the prisoner and deceased fell to fighting with sticks, and the latter was killed, the former was sentenced to imprisonment for 6 months; *N. A. R. vol. 1, page 160*:—where the prisoner, in a quarrel in which he himself was the aggressor, after mutual blows, killed the deceased with his sword, he was sentenced to imprisonment for 7 years; *N. A. R. vol. 6, page 23*.

In mutual struggle.

In prosecution of
previous enmity.

3996. Where there was evidence of previous enmity and intention to assault, but not of intention to kill, the sentence was for imprisonment for life; *N. A. R. vol. 4, page 161*; where the prisoners wilfully beat and tortured a boy till he died, and the only palliation was the absence of intent to kill, they were all sentenced to imprisonment in banishment for 14 years; *N. A. R. vol. 4, page 162*; in a similar case, where the prisoners waylaid and assaulted the deceased, but without intent to kill, so that he died in three hours, the principal was sentenced to imprisonment for 14 years, and three others for 7 years; *N. A. R. vol. 5, page 63*:—so, where the prisoners assaulted and beat the deceased so as to cause his death soon after, in revenge for accusing them of dacoity, but the evidence was insufficient to prove an intent to kill, they were sentenced to imprisonment for 7 years; *N. A. R. vol. 4, page 120*. Where the deceased struck the prisoner with a club, and the latter went home (a short distance) for his sword, and returning met the deceased and

killed him on the spot, he was sentenced to imprisonment for 5 years; *N. A. R. vol. 2, page 107*. Where the prisoner, in revenge for blows over-night, beat the deceased with his fists so as to cause his death, but without intent to kill, he was sentenced to imprisonment for 5 years; *N. A. R. vol. 4, page 40*:—where one prisoner struck the deceased with his hand and a stick, so as to cause death the following day, and the other instigated and commanded the assault, the former was sentenced to imprisonment for 5 years, and the latter for 3 years; *N. A. R. vol. 4, page 129*.

3997. Where the prisoner, when called in to cure a girl of raving fits, treated her as possessed by a devil, and, besides using other means intended as remedies, beat her heavily with shoes for its supposed expulsion, so that the girl died within three days from the effects of the blows,—he was sentenced to imprisonment for one year, the absence of a malicious intent being evident. *N. A. R. vol. 6, page 137*.

Absence of malicious motive.

3998. A Mahomedan was convicted of burying his mother-in-law, who was leprous, at her own request, without ascertaining that she was dead; and was cautioned and released in consideration of his having been 6 months in confinement: a proclamation was at the same time issued warning the Mahomedans that they would be subject to punishment if guilty of such offence; *N. A. R. vol. 1, page 218*. A Hindoo at the request of his father, who was afflicted with leprosy, filled a pit with fuel to which he set fire, and the father threw himself into it and was killed; but the prisoner was released without punishment, as he appeared to be justified under the tenets of the Hindoo law: *N. A. R. vol. 1, page 220*. For the same reason a Hindoo who assisted his father, suffering from leprosy, to drown himself was released; *N. A. R. vol. 1, page 292*. A woman and her husband were both afflicted with leprosy; the latter died, and the former throwing herself into his grave was buried with him by the prisoners at her own desire; they were sentenced to 6 months' imprisonment; *N. A. R. vol. 2, page 18*. Two prisoners convicted of assisting in the suicide of their uncle, a leper, were released in consideration of the confinement which they had already undergone; *N. A. R. vol. 3, page 127*. In later cases the sentence has been for one year's imprisonment with fine in lieu of labor; *Reports IV. P. 1855, part 2, page 62*. Two prisoners charged with aiding and abetting a third person (who died while under trial) in burying alive his brother, a leper, at his own request, were acquitted and discharged as it was not proved that they were aware of his intention; *N. A. R. vol. 3, page 139*. Six prisoners were convicted of assisting in burning to death a woman, apparently with her own consent, for the purpose of intimidating and preventing persons deputed to execute a decree of court from performing that duty: one, her husband, was sentenced to imprisonment for life, and the others for 7 years; *N. A. R. vol. 2, page 310*. Where a person, in order to avoid disgrace, besought his two nephews to kill him, threatening that he would kill them if they refused, and one of them at last consented, and with the sword which he received from his uncle killed him by two blows on the back of the neck, the two nephews were sentenced to imprisonment in banishment for 14 years, and the other persons present to imprisonment for 7 and 5 years: the number of persons present, and

Assisting in suicide.

To relieve persons suffering from leprosy.

In revenge for injuries sustained from another person.

In order to avoid disgrace.

the fact that the wounds were inflicted with the victim's own weapon, proved that there was no real compulsion ; *Reports W. P.* 1854, *part 2*, *page 573*.

**Erroneous
homicide.**

Sentence of death ;

of imprisonment for
14 years ;

on provocation, for
2 years ;

where the act was
unlikely to cause
death, for 6 months.

3999. The prisoner desiring to kill the wife of a person, with whom she had an illicit connection, gave her two poisoned loaves; but a third person eating thereof died in consequence, and the prisoner was sentenced to death ; *N. A. R. vol. 1, page 287*. A prisoner convicted of the murder of a man in the intent to kill a woman, with whom he had maintained a criminal intercourse, but who had deserted him for the deceased, was sentenced to death ; *N. A. R. vol. 1, page 309*. Where the prisoner in a sudden fit of anger aimed a blow at one person, which fell upon a child, concealed at the time from the view of the prisoner, and instantly caused its death, he was sentenced to imprisonment for 14 years ; *N. A. R. vol. 5, page 96*. In a similar case the principle was held that as the assault was unjustifiable, the prisoners must be held responsible for the full effect of the blow without reference to the physical strength of the person on whom it fell: but as the prisoners had evidently no intention to kill, they were sentenced to imprisonment for one year with labor commutable to fine ; *Reports L. P.* 1855, *part 2, page 593*. Where the prisoner found his wife in bed with another man, and killed her on the spot, and while endeavouring to strike the paramour killed his mother and brother who interposed, he was sentenced to imprisonment for 2 years ; the killing the wife was justifiable under the Mahomedan law from the presumption of adultery arising from situation; and the killing the others was considered erroneous homicide ; *N. A. R. vol. 1, page 151*. Where the prisoner threw a piece of burnt brick at the prosecutor, and it struck the deceased on the breast and occasioned her immediate death, it appeared that he had no intention to kill, and that the act was not likely to cause death, and he was sentenced to imprisonment for 6 months ; *N. A. R. vol. 1, page 52*.

**Accidental
homicide.**

4000. Where the prisoner killed the deceased at night mistaking him for a dog or jackal, and after endeavouring in vain to resuscitate him concealed the body, he was released in consideration of the period during which he had already suffered imprisonment ; *N. A. R. vol. 2, page 67*. Where the prisoner accidentally shot the deceased while firing at a wild hog, he was acquitted and released ; *N. A. R. vol. 4, page 1*.

**Homicide by
compulsion.**

4001. Where the prisoner killed the deceased by order of his master, and under fear of immediate death in case of refusal, the *futwa* acquitted him, and he was released. *N. A. R. vol. 1, page 101*. See last case cited in para. 3998.

**Justifiable
homicide.**

From adultery of
wife ;

4002. It has been held justifiable homicide, where a woman in defence of her honor killed a man who was entering her house at night with the intent to have forcible connection with her ; *N. A. R. vol. 3, page 233* :—where the prisoner finding a man in the act of adultery with his wife killed either one or both ; *N. A. R. vol. 1, page 130* ; *vol. 2, pages 171, 408, 456* ; *vol. 3, page 169* ; *vol. 4, page 168* ; *vol. 5, page 158* ; and *vol. 6, page 329* ;—where the prisoner, detecting his wife in the act of adultery at a short distance from his own house, went back to his house for a sword, with which he returned, and finding the

parties still in the position in which he left them, wounded the adulterer and a woman who acted as procuress, and killed his wife; *N. A. R. vol. 5, page 90*:—so, where the prisoner found the deceased in a situation which warranted the presumption that he was attempting to commit adultery with his wife; *N. A. R. vol. 1, page 156*:—so, where the prisoner killed a person whom he detected in the act of adultery with his wife, though he was aware of his wife's elopement and of her living in a state of adultery with the deceased, but had done every thing in his power to dissuade her from a continuance of the criminal intercourse; *N. A. R. vol. 1, page 298*:—but in a later case of the same nature it has been held that the prisoner was not justified, the apparent difference being that he had in a certain degree connived at the intercourse by permitting the deceased to live under the same roof with his wife, and he was sentenced to transportation for life; *N. A. R. vol. 6, page 27*:—so, a prisoner was held not justified, who lay in wait and killed the deceased while sleeping with his wife, after she had with his knowledge been living with the deceased for thirteen years; and he was sentenced to death; *N. A. R. vol. 1, page 389*:—so, the finding a man at night prosecuting an adulterous intercourse with his wife, was not held sufficient to justify the prisoner in homicide with deliberate cruelty and torture, however it might excuse acts committed in the irritation and excitement of the moment; and he was sentenced to imprisonment for life; *N. A. R. vol. 4, page 292*:—so, where the prisoner, aware of his wife's intrigue, watched her, and having armed himself for the express purpose of killing one or both followed her, and, finding her in the act of adultery, wounded both her and her paramour, and after they had separated pursued and again wounded both of them successively, while endeavouring to escape, it was held that these circumstances of aggravation diminished the justification, and he was sentenced to imprisonment for 2 years and a fine of 100 rupees in lieu of labor; *N. A. R. vol. 5, page 65*:—and so, where the prisoner killed the deceased under strong grounds of provocation for the violation of his wife, though he did not find him in the act, the court held that he was not completely justified, but that the imprisonment already undergone was fully adequate to his offence; *N. A. R. vol. 5, page 71*. Two prisoners were held to be justified in killing the deceased under sudden irritation at finding him in bed with their sister; *N. A. R. vol. 1, page 74*:—so, when the prisoner killed his sister and her paramour in the act of adultery; *N. A. R. vol. 2, page 48*:—but both of these trials were held before the enactment of sect. 5, Reg. IV. 1822.* A prisoner was held justified who, under the influence of gross provocation, in consequence of dishonor done to his family by the forcible violation of his sister by the deceased, wounded him with a sword, which caused his death a fortnight after; *N. A. R. vol. 5, page 99*:—but where a brother, finding a man in the house of his sister under very strong circumstances of suspicion that he had criminal intercourse with her, kept guard at the door, while a distant relation who was with him entered the house wherein the deceased had secreted himself and deliberately cut his throat, it was held that the admission of justification was barred by the deliberate manner of the murder, and by the neglect of their power to seize him; and the relation was sentenced to imprisonment for life, and the brother for 7 years; *N. A. R. vol. 4, page 130*:—and where the prisoner finding his brother's wife in the act of adultery, during the absence of his brother, seized a sword and killed her, it was held that he was not justified,

and in what cases
of that nature not
justified.

From adultery or
violation of sister,

* v. para. 3931.

and in what cases
of that nature not
justified.

but capital punishment was remitted, and he was sentenced to imprisonment for life; *N. A. R. vol. 2, page 419*:—where the prisoner, finding the deceased in the attempt to violate his sister-in-law by force, beat him so severely with his club that he died after three days, he was sentenced to imprisonment for one year; *N. A. R. vol. 2, page 491*. A prisoner, convicted of killing the deceased while attempting to ravish his master's wife, was released without punishment, as were also two persons who concealed the body; *N. A. R. vol. 1, page 240*. Where the prisoners killed a burkundaz, after he and another burkundaz had in cold blood put to death a villager whom they had arrested and while they were under no reasonable apprehension of a rescue, the homicide was deemed justifiable; *N. A. R. vol. 2, page 327*. In a case of assault and wounding, referred to the nizamat adawlut by the judge of circuit on a doubt as to whether certain of the prisoners, who were sepoys, were not justified, as they acted under the orders of a jemadar, their superior officer; the case was returned for sentence, and the judge informed that, though the fact noticed might operate in mitigation of punishment, it could not justify gross infraction of the peace; *N. A. R. vol. 3, page 128*. Where the prisoner killed the deceased in self-defence, in an attack on him by the deceased occasioned by jealousy, the homicide was considered justifiable; *N. A. R. vol. 4, page 132*. For cases in which the homicide of persons found in the act of committing theft has been held justifiable, see *para. 3983*.

In the rescue of his master's wife from an attempt to ravish her.

In retaliation of a murder.

Sepoys acting under order of jemadar not justified.

In self-defence.

Of thieves.

NOTE.

The English law presumes every homicide to be murder, until the contrary appears. Therefore the prosecutor is not bound to prove malice, or any facts or circumstances beside the homicide from which it may be presumed; but in such a case it is only presumed, and the defendant may rebut that presumption by proving that the homicide was *justifiable* or *excusable*, or that at most it amounted to *manslaughter* only, and not to *murder*.

Justifiable homicide is of three kinds:—1. Where the proper officer executes a criminal in strict conformity with the term of his sentence. 2. Where an officer of justice, or other person acting in his aid, in the legal exercise of a particular duty, kills a person who resists or prevents him from executing it; but in this case the homicide is not justifiable without an apparent absolute necessity. 3. Where the homicide is committed in prevention of a forcible and atrocious crime; as, for instance, if a man attempt to rob or murder another, and be killed in the attempt, the slayer shall be acquitted and discharged. So a woman is justified in killing one who attempts to ravish her; and so too the husband or father may justify killing a man who attempts a rape upon his wife or daughter; but not if he take them in adultery by consent, for the one is forcible and felonious, but not the other.

Excusable homicide is of two kinds:—1. Where a man doing a lawful act, without any intention of hurt, by accident kills another; as, for instance, where a man is working with a hatchet, and the head by accident flies off and kills a person standing by. This is called homicide *per infortunium*, or by misadventure. 2. Where a man kills another upon a sudden rencounter, merely in his own defence, or in defence of his wife, child, parent, or servant, and not from any vindictive feeling; which is termed homicide *se defendendo*.

Manslaughter is the unlawful and felonious killing of another, without any malice either expressed or implied. It is of two kinds:—1. Involuntary manslaughter, where a man doing an unlawful act, not amounting to felony, by accident kills another. 2. Voluntary manslaughter, where, upon a sudden quarrel,

two persons fight, and one of them kills the other; or where a man greatly provokes another by some personal violence, &c., and the other immediately kills him.

Murder is thus defined by Lord Coke: "when a person of sound memory and discretion unlawfully killeth any reasonable creature in being, and under the king's peace, with malice aforethought either express or implied." 1. It must be committed by a person of sound memory and discretion; it cannot be committed by an idiot, lunatic, or infant, unless indeed he show a consciousness of doing wrong, and of course a discretion or discernment between good and evil. But if any person procure an idiot, &c., to murder another, the procurer is guilty of the murder, although, perhaps, not present at the time it was committed.—2. It must be an unlawful killing, not excusable or justifiable. It may be by poisoning, striking, starving, drowning, and a thousand other forms of death by which human nature may be overcome. Taking away a man's life by perjury is not, it seems, in law murder; although, *in foro conscientia*, it is as much so as killing with a sword. If a man however do any other act, of which the probable consequence may be, and eventually is, death, such killing may be murder, although no stroke were struck by himself; as was the case of the unnatural son who exposed his sick father to the air against his will, by reason whereof he died; of the harlot, who laid her child in an orchard, where a kite struck it and killed it; and of the mother, who hid her child in a pig-stye, where it was devoured. So, if one, under a well-grounded apprehension of personal violence, do an act which causes his death (as, for instance, jumps out of a window, or into a river), he who threatened is answerable for the consequences. If a man have a beast that is used to do mischief, and he knowing it suffer it to go abroad, and it kill a man, this, it seems, is manslaughter in the owner; but, if he had purposely turned it loose, though merely to frighten people and to make what is called sport, it is as much murder as if he had incited a bear or a dog to worry them. If a man have a disease, which in all likelihood would terminate his life in a short time, and another give him a wound or hurt, which hastens his death, this is such a killing as constitutes a murder. So, if a man be wounded, and the wound turn to a gangrene or fever for want of proper applications, or from neglect, and the man die of the gangrene or fever; or if it become fatal from the refusal of the party to submit to a surgical operation; this is also such a killing as would constitute murder; but otherwise, if the death of the party were caused by improper applications to the wound, and not by the wound itself. And it is a general rule, that, to make the killing murder, the death must follow within a year and a day after the stroke or other cause of it.—3. The person killed must be "a reasonable creature in being, and under the king's peace." Therefore to kill a child in its mother's womb is no murder; but if the child be born alive, and die by reason of the potion or bruises it received in the womb, it may be murder in the person who administered or gave them. So, if a mortal wound be given to a child whilst in the act of being born, for instance upon the head as soon as the head appears, and before the child has breathed, it may be murder if the child is afterward born alive and dies thereof. But it must be proved that the entire child has actually been born into the world in a living state; and the fact of its having breathed is not a conclusive proof thereof. But the fact of the child's being still connected with the mother by the umbilical cord will not prevent the killing from being murder.—As to the words "the king's peace" they mean merely that it is not murder to kill an alien enemy in time of war; but killing even an alien enemy within the kingdom, unless in the actual exercise of war, would be murder.—4. And lastly, the killing must be committed with malice aforethought. Malice is either express or implied. Express malice is when one, with a sedate and deliberate mind, and formed design, doth kill another; which formed design is evidenced by external circumstances discovering that inward intention; as, lying in wait, antecedent menaces, former grudges, and concerted schemes to do him some bodily harm. Neither shall he be guilty of a less crime, who kills another in consequence of such a wilful act as shews him to be an enemy to mankind in general: as, going deliberately with a horse used to strike, or discharging a gun, among a multitude of people. So if a man resolve to kill the next person he meets, and do kill him, it is murder, although he knew him not for it is universal malice. And it may be necessary here to observe, that no provocation, however great, will extenuate or justify a homicide, where there is evidence of express malice. So, where A and B having

fallen out, A said he would not strike, but would give B a pot of ale to strike him; upon which B did strike, and A thereupon killed him; this was holden to be murder. And in many cases where no malice is expressed or openly indicated, the law will imply it. Thus, where a man wilfully poisons another; in such a deliberate act the law presumes malice, though no particular enmity can be proved. So, if a man kill another suddenly without any, or without a considerable, provocation; if he kill an officer of justice in the legal execution of his duty; or if, intending to do another felony, he undesignedly kill a man: in all these cases the law implies malice, and the offence is murder.—If two persons mutually agree to commit suicide together, and accordingly take poison or attempt to drown themselves together, but one only of them dies, the survivor is guilty of murder.—As there are many very nice distinctions, however, upon this subject of malice prepenſe, expreſs, and implied, it may be desirable to consider the subject more fully and minutely, which we shall do under the following heads:—

Killing by poison. Of all the forms of death, by which human nature may be overcome, the most detestable is that of poison; because it can of all others be the least prevented either by manhood or forethought. And therefore in all cases where a man wilfully administers poison to another; or lays poison for him, and either he or another takes it, and is killed by it; the law implies malice, although no particular enmity can be proved. If however, it were administered by mistake, or if it were laid with an innocent intention in the place from which the deceased took it, it is merely homicide by misadventure. So, if a physician or surgeon give his patient a potion or plaster to cure him, which contrary to expectation kills him, this also is neither murder nor manslaughter, but misadventure.

Killing by fighting. Killing by fighting may be either murder, or manslaughter, or homicide *se defendendo*, according to circumstances. 1. If two persons quarrel and afterwards fight, and one of them kill the other,—in such a case, if there intervened, between the quarrel and the fight, a sufficient cooling time for passion to subside and reason to interpose, the killing would be murder; but if such a time had not intervened, if the parties, in their passion, fought immediately, or even if immediately upon the quarrel they went out and fought in a field (for this is deemed a continued act of passion), the killing in such a case would be manslaughter only, whether the party killing struck the first blow or not. Therefore if two persons deliberately fight a duel, and one of them be killed, the other and his second are guilty of murder; no matter how grievous the provocation, or by which party it was given. The second of the deceased, also, is deemed guilty of murder, as being present, aiding, and abetting; although Lord Hale seems to think the rule of law, as to principals in the second degree, too far strained in that case.—And even in the case of a sudden quarrel, where the parties immediately fight, the case may be attended with such circumstances as will indicate malice upon the part of the party killing; and the killing then would be murder, and not merely manslaughter. If, for instance, the party killing began the attack under circumstances of undue advantage,—as if A and B quarrel, and A draw his sword and make a pass at B, and B thereupon draw his sword, and they fight, and B is killed, A would be guilty of murder; for his making the pass before B had drawn his sword, shews that he sought his blood. So, where A and B quarrelled, and A threw a bottle at B, and then drew his sword, and B then threw the bottle back at A, and wounded him, upon which A immediately stabbed him: this was holden to be murder. But if the parties, at the commencement, attack each other upon equal terms, and afterwards, in the course of the fight, one of them in his passion snatch up a deadly weapon and kill the other with it; this would be manslaughter only.—So, if there be any other circumstances in the case indicative of malice in the party killing, it will be murder. As, for instance, if two persons fight upon a sudden quarrel, and be separated; and one of them afterwards, having provided himself with a deadly weapon, lies in wait for the other, to have an opportunity, thus armed, to renew the quarrel; and they accordingly meet, quarrel, and fight, and the man who is armed kills the other; this is murder. So, if two persons fight from malice, and pretend or feign a reconciliation, and they afterwards meet and suddenly fight upon the score of the old malice, and one of them be killed; this is murder, and not merely

manslaughter. So, if B challenge A, and A refuse to meet him, but tell him that he shall be on his way to such a place upon business at such a time, and B meet him on his way and assault him, and they fight, and A kills B: if it appear that A made this communication for the purpose of evading the law, by giving the fight the appearance of a sudden quarrel, the killing would be murder; but, if the communication were made undesignedly, it would be manslaughter only.—2. Boxing and sword-playing are unlawful acts; therefore, if a player be killed, such killing is manslaughter. But all struggles in anger whether by fighting, wrestling, or in any other mode, are unlawful, and death occasioned by them is manslaughter at the least.—3. If two men fight upon a sudden quarrel, and one of them after a while endeavour to avoid any further struggle, and retreat as far as he can, until at length no means of escaping his assailant remain to him, and he then turn round and kill his assailant, in order to avoid destruction: this homicide is excusable as being committed in self-defence; and, malice apart, it is little matter, in such a case, which struck the first blow at the beginning of the contest. And the same, of course, where one man attacks another, and the latter, without fighting, flies, and then turns round and kills his assailant, as above mentioned. But in either of these cases, to show that it was homicide *se defendendo*, it must appear that the party killing had retreated, either as far as he could, by reason of some wall, ditch, or other impediment, or as far as the fierceness of the assault would permit him; for the assault may have been so fierce as not to allow him to yield a step, without manifest danger of his life, or enormous bodily harm; and then, in his defence, if there be no other way of saving his own life, he may kill his assailant instantly. The distinction between this kind of homicide and manslaughter, is, that here the slayer could not otherwise escape, although he would; in manslaughter he would not escape if he could.—And as the manner of the defence, so is also the time, to be considered; for if the person assaulted do not fall upon the aggressor until the affray is over, or when he is running away, that is revenge, and not defence. Neither, under the cover of self-defence, will the law permit a man to screen himself from the guilt of deliberate murder: for if A and B agree to fight a duel, and A give the first onset, and B retreat as far as he safely can, and then kill A, this is murder, because of the previous malice and concerted design.—Under this excuse of self-defence, the principal civil and natural relations are comprehended; therefore, master and servant, parent and child, husband and wife, killing an assailant in the necessary defence of each other respectively, are excused; the act of the relation assisting being construed the same as the act of the party himself.—There is one species of homicide *se defendendo*, where the party slain is equally innocent as he who occasions his death: as, for instance, that case mentioned by Lord Bacon, where two persons, being shipwrecked, have got on the same plank, but, finding it not able to save them both, one of them thrusts the other from it, and he is drowned: this homicide is excusable through unavoidable necessity, and upon the principle of self-defence.—4. If, when two persons are fighting, a third come up, and take the part of one of them, and kill the other: this will be manslaughter in the third party; and murder or manslaughter in the person whom he assisted, according as the fight was deliberate and premeditated, or upon a sudden quarrel. If the fighting, however, were deliberate, or otherwise of malice, and the third party, when he interfered, knew it to be so, the killing would be murder, both in the party who thus interfered, and in the person whom he assisted. If, on the other hand, the third party, who thus interferes, be killed, it is but manslaughter.

Killing upon provocation. No provocation whatever can render a homicide justifiable, or even excusable; the least it can amount to is manslaughter. If a man kill another suddenly, without any, or without a considerable, provocation, the law implies malice, and the homicide is murder; but if the provocation were great, and such as must have greatly provoked him, the killing is manslaughter only. In considering, however, whether the killing upon provocation amount to murder or manslaughter, the instrument wherewith the homicide was effected must also be taken into consideration: for if it were effected with a deadly weapon, the provocation must be great indeed to extenuate the offence to manslaughter: if with a weapon or other means not likely or intended to produce death, a less degree of provocation will be sufficient; in fact, the mode of resentment must bear a reasonable proportion to the provocation, to reduce the offence to manslaughter. Where some provoking words being used by a soldier to a woman, she gave him a box

on the ear; and the soldier immediately gave her a blow with the point of his sword on the breast, and then ran after her, and stabbed her in the back; this was at first deemed murder; but it appearing afterwards that the blow given to the soldier was with an iron patten, and that it drew a great deal of blood, the offence was holden to be manslaughter only. Where two soldiers demanded to be admitted to a public-house to drink, and the landlord refused, because it was after eleven o'clock at night; one of them, however, upon the door being afterwards opened to let out company, rushed in; and whilst the landlord was struggling to get him out, the other soldier struck the landlord on the head with a sharp instrument, and killed him; this was holden to be murder, notwithstanding the struggle with the other soldier; besides the landlord had a right to put him out of his house. So, in all other cases, where upon a sudden provocation one beats another in a cruel and unusual manner, so that he dies, it is murder. An unwarrantable imprisonment of a man's person, however, has been holden sufficient provocation to make a killing, even with a sword, manslaughter only. Where A to prevent B from fighting with his brother, laid hold of him and held him down, but struck no blow, upon which B stabbed A; it was holden that if A did nothing more than was necessary to prevent B from beating his brother, and had died of the stab, the offence of B would have been murder; but that if A did more than was necessary to prevent the beating of his brother, it would have been manslaughter only. So, if a man pull another's nose, or offer him any other great personal indignity, and the other thereupon immediately kill him, it is manslaughter only. Or if a man take another in adultery with his wife, and kill him directly upon the spot, this is manslaughter merely. So, if a father see another person in the act of committing an unnatural crime with his son, and instantly kill him, it is manslaughter only; but if, hearing of it, he go in quest of the party, and kill him, it is murder. Where a boy, after fighting with another, ran home bleeding to his father; and the father immediately took a small cudgel, and ran three-quarters of a mile to the place where the other boy was, and struck him a single blow with the stick, of which blow the boy afterwards died: this was holden to be manslaughter only. Where a mob threw a pickpocket into a pond, for the purpose of ducking him, but he was unfortunately drowned: this was holden to be manslaughter. But it may safely be laid down as a general rule, that no words or gestures, however opprobrious or provoking, will be considered in law to be provocation sufficient to reduce homicide to manslaughter, if the killing be effected with a deadly weapon, or an intention to do the deceased some grievous bodily harm be otherwise manifested; but if effected with a blow of a fist, or with a stick, or other weapon not likely to kill, it is manslaughter only. And if there be a provocation by blows, which are not sufficiently violent in themselves to reduce the killing below the crime of murder, yet if they be accompanied by very aggravated words and gestures, this may make it manslaughter only.—But in all cases, to reduce a homicide upon provocation to manslaughter, it is essential that the battery or wounding, &c., appear to have been inflicted immediately upon the provocation being given; for if there be a sufficient cooling time for passion to subside and reason to interpose, and the person so provoked afterwards kills the other, this is deliberate revenge, and not heat of blood, and accordingly amounts to murder. So, if there be evidence of express malice, the killing will be murder, however great the provocation.

Killing by correction. Where a parent is moderately correcting his child, a master his servant or scholar, or an officer punishing a criminal, and he happens to occasion his death, it is only misadventure; but if he exceed the bounds of moderation, either in the manner, the instrument, or the quantity of punishment, and death ensue, it is manslaughter at the least, and in some cases (according to the circumstances) murder. Where a master corrected his servant with an iron bar, and a schoolmaster stamped on his scholar's belly, so that each of the sufferers died: these were justly holden to be murders; because the correction being excessive, and such as could not proceed but from a bad heart, it was equivalent to a deliberate act of killing. So, in all other cases where the correction is inflicted with a deadly weapon, and the party dies of it, it will be murder; if with an instrument not likely to kill, though improper for the purpose of correction, it will be manslaughter. Where a master struck his servant with one of his clogs, because he had not cleaned them, and death unfortunately ensued; it was holden to be manslaughter only,

because the clog was very unlikely to cause death, and the master consequently could not have the intention of taking away the servant's life by hitting him with it.

Killing in defence of property, &c. If any person attempt to rob or murder another in or near the highway, or in a dwelling house, or attempt burglariously to break into any dwelling house in the night time, and be killed in the attempt, the slayer shall be acquitted and discharged; for the homicide is justifiable and the killing is without felony. And the same, where a man is killed in attempting to burn a house; or where a woman kills a man who attempts to ravish her; or where a man is killed in attempting to break open a house in the day-time with intent to rob, or to commit any other forcible and atrocious crime. And not only the party whose person or property is thus attacked, but his servants, and other members of his family, and even strangers who are present at the time, are equally justified in killing the assailant. The above rule, however, does not extend to felonies without force, such as picking pockets, nor to misdemeanors of any kind; and even in cases within the rule, it must be proved that the intent to commit such forcible and atrocious crime was clearly manifested by the felon, otherwise the homicide will be manslaughter at least, if not murder. But, in cases within the rule, it may be necessary to observe, that the party whose person or property is attacked, is not obliged to retreat, as in other cases of self-defence, but may even pursue the assailant until he find himself or his property out of danger.—What we have now said, relates to felonies by force. In the case of forcible misdemeanors, such as trespass in taking goods, although the owner may justify beating the trespasser, in order to make him desist, yet if he kill him it will be manslaughter: or if, instead of beating him, he attack him with a deadly weapon, it would perhaps be murder, particularly if the wound were given after the party had desisted from the trespass. But, in defence of a man's house, the owner or his family may kill a trespasser who would forcibly dispossess him of it, in the same manner as he might by law kill in self-defence a man who attacked him personally; with this distinction, however, that in defending his house he need not retreat, as in other cases of *se defendendo*, for that would be giving up his house to his adversary. As to personal assaults, where the party assaulted kills his adversary, we have already considered them under the foregoing heads.

Killing without intention whilst doing another act. If a person, whilst doing or attempting to do another act, undesignedly kill a man,—if the act intended or attempted were a felony, the killing is murder; if unlawful (*malum in se*) but not amounting to felony, the killing is manslaughter: if lawful (that is, not being *malum in se*) homicide by misadventure merely. If a man deliberately shoot at A, and miss him, but kill B, this is murder. So, if he strike at A, and by accident strike and kill B, it is murder. If a man lay poison for A, and B (against whom he had no malicious intent) take it, and it kill him, this is likewise murder. So, if whilst two men are deliberately fighting, a third go between them to part them, and be killed by one of them: it is murder, whether he were killed accidentally or designedly. If a man shoot at another's poultry, with intent to steal them, and by accident kill a man, it is murder; if without such intention, it is manslaughter; the act of shooting at the poultry being unlawful, but not felonious. If a man throw a stone at a horse, and it hit the rider and kill him, it is manslaughter. If, when engaged in an unlawful or dangerous sport, a man kill another by accident, it is manslaughter; if the sport were lawful and not dangerous, it would be homicide by misadventure merely. So, if a man, intending to kill a person attempting to commit a forcible and atrocious crime against his person or property, by mistake kill one of his own family, it is homicide by misadventure merely. Where a man is at work with a hatchet, and the head of it flies off and kills a bystander, this is homicide by misadventure. So, if a man, shooting at game, by accident kill another, it is homicide by misadventure merely, even although the party be unqualified; for the use of fire-arms by an unqualified person is merely a prohibited act, and not *malum in se*.—There are two seeming exceptions, however, to the above rule. *First.* If two persons be fighting under such circumstances that if one were killed it would be manslaughter only in the other—if, in such a case, an innocent party be unintentionally killed by one of them, it is manslaughter only. This, perhaps, is not strictly an exception; for the act in which the parties are engaged, namely, the fighting, is not in itself

felonious, although the result of it may be so. *Secondly.* Where an act, in itself lawful, is at the same time dangerous;—in order to render an unintentional homicide from it excusable, it must appear that the party, whilst doing the act, used such a degree of caution as to make it improbable that any danger or injury should arise from it to others: if not, the homicide will be manslaughter at the least. For instance, if a workman throw stones or rubbish, &c., from a house, and thereby kill a person passing underneath, it is murder, manslaughter, or homicide by misadventure, according to the degree of precaution taken by him that no person should be injured by them, and of the necessity of such precaution. If he did it without previously warning the persons beneath, and at a time when it was likely that persons were passing, it would be murder; if at a time when it was not likely that any persons were passing, it would be manslaughter; if in a retired place, where no persons were in the habit of passing, or likely to pass, it would be misadventure merely. But if he previously gave warning to the persons beneath,—then, if it happened in a country village where few persons pass, it is misadventure only; if in London or other populous town at a time when the streets are full, it would be manslaughter.—If a man, breaking an unruly or vicious horse, ride him amongst a crowd, and the horse kick a man and kill him: this is murder, if the rider brought the horse into the crowd with an intent to do mischief, or even to divert himself by frightening the crowd; manslaughter, if done heedlessly and incautiously only.—If a man, driving a cart or other carriage, drive it over another man and kill him—if he saw or had timely notice of the probable mischief, and yet drove on, it would be murder; if he purposely drove it furiously in amongst a crowd, it would probably be murder; *semb.* if in a street where persons were much in the habit of passing, it would be manslaughter; if in a place where people did not usually pass, misadventure merely, provided he took that care which persons in similar situations are accustomed to do. If the driver of a carriage race with another carriage, and urge his horses to so rapid a pace that he cannot control them, it is manslaughter in both drivers if in consequence the carriage upset and a passenger be killed.—Where a man lays poison to kill rats, and another man takes it, and it kills him; if the poison were laid in such a manner or place as to be mistaken for food, it is, perhaps, manslaughter; if otherwise, misadventure only.—If a man discharge a loaded gun amongst a multitude of people, and death ensue, it is murder; for the law in such a case will imply malice. If he discharge it, merely for the purpose of unloading it, or the like, and death ensue—then, if it were in a place where persons were likely to pass, it is manslaughter; otherwise, misadventure only. Where a man gave a loaded gun to his servant to protect a corn-field from deer during the night, with instructions to fire when he heard any bustle in the corn by the deer; and the master himself unfortunately rushed into the corn during the night, and the servant, imagining it to be the deer, fired, and shot his master: this was holden to be misadventure. Where a man, finding a pistol in the street, brought it home, and imagining (from having tried it with the rammer) that it was not loaded, presented it in sport at his wife, drew the trigger, and killed her: this was holden to be manslaughter; but Mr. Justice Foster doubts the propriety of the decision, as the defendant took the usual precaution to ascertain that the pistol was not loaded; and clearly, if he took not this or other reasonable precaution, it would be manslaughter. If a man, shooting at butts or a target, by accident kill a bystander, it is misadventure; but this must be understood of cases where a proper precaution to prevent accidents has been taken; for if the target, &c. be placed near a highway or path, where persons are in the habit of passing, the killing would probably be deemed manslaughter.—So, if a man, knowing that people are passing along a street, wantonly throw a stone or shoot an arrow into it, likely to do an injury, with an intent to hurt some of the persons passing, and a person be killed by it, it is murder, although the stone or arrow was not intended to hit any particular person; but if it were done thoughtlessly and incautiously, and without intent to hurt any one,—then, if it were thrown or shot into a place where people were in the habit of passing, the killing is manslaughter; if into a place where persons were not likely to pass, misadventure only.

Killing officers of justice. If a man kill an officer of justice, either civil or criminal, such as a bailiff, constable, watchman, &c., in the legal execution of his duty, or any person acting in aid of him (whether specially called thereunto or not) or any private person endeavouring to suppress an affray, or apprehend

a felon, knowing his authority, or the intention with which he interposes ; the law will imply malice, and the offender will be guilty of murder. And the officer and persons acting in aid of him enjoy this privilege and protection, *eundo, morando, et redeundo* : therefore, if an officer, on his way to do his duty, be opposed and killed, it is murder ; or if he arrive at the place, and in consequence of opposition retreat, and on his retreat be killed, it is murder. Three things are to be attended to, in matters of this kind : the legality of the deceased's authority, the legality of the manner in which he executed it, and the defendant's knowledge of that authority ; for if an officer be killed in attempting to execute a writ or warrant invalid on the face of it, or against a wrong person, or out of the district in which alone it could legally be executed ; or if a private person interfere and act in a case where he has no authority by law to do so ; or if the defendant had no knowledge of the officer's business, or of the intention with which a private person interferes, and the officer or private person be resisted and killed : the killing will be manslaughter only—1. As to the legality of the authority ; if an officer, having a warrant from a proper magistrate to apprehend B for felony ; or if B be indicted for felony ; or if the hue and cry be levied against B ; in these cases, if B or any of his accomplices kill the officer or any person joining in the hue and cry, it is murder, whether B be guilty or innocent of the felony charged against him. But if the warrant were illegal and void upon the face of it ; or issued with a blank in it, and the blank afterwards filled up ; or attempted to be executed against C instead of B ; the killing would be manslaughter only. If a writ of execution in civil cases be correct upon the face of it, although the judgment be erroneous, or the proceedings irregular—if the officer, in endeavouring to execute it, be resisted and killed, it is murder ; but if the writ were a nullity on the face of it, or if the warrant upon it were attempted to be executed by any other than the officer to whom it was directed (the officer himself not being present, or, at least, acting in the arrest) the killing would be manslaughter only. If an innocent person be indicted for a felony, and an attempt be made to arrest him for it without warrant, and he resist and kill the party attempting to arrest him—if the party attempting the arrest were a constable, the killing is murder ; if a private person, manslaughter ; because the constable has authority by law to arrest in such a case ; a private person has not. And the same in all cases where a person is arrested or attempted to be arrested upon a reasonable suspicion of felony. But if a man actually commit a felony, and another, in whose presence he committed it, attempt to arrest him for it, and be resisted and killed ; or if a person, present at an affray, interfere for the purpose of restraining the offenders and keeping the peace, and be killed ; or if a person, present when another attempts to commit a treason or felony, lay hold of him in order to prevent him, and be killed : the killing in these cases would be murder, whether the person arresting or interfering, &c., be a constable or not ; for either has power to arrest or interfere, &c., in such a case.—2. As to the legality of the manner in which the authority is exercised : if the constable of the vill of A attempt without warrant to suppress a tumult in the vill of B, and be resisted and killed, it is manslaughter only ; for he had authority, in such a case, within the vill of A alone. So, if a sheriff's officer attempt to execute a writ out of the proper county, and be resisted and killed, it is manslaughter only. But constables and other peace officers may execute warrants out of their respective precincts, provided the place where the warrant is executed be within the jurisdiction of the magistrate granting or backing the warrant.—3. As to the defendant's knowledge of the deceased's authority or intention, — when any officer is in the legal execution of his duty, or a private person endeavouring to suppress an affray, or apprehend a felon, and is resisted and killed—if it appear that the slayer knew the officer's business or the intent of the private person, either expressly from the deceased, or impliedly from circumstances, the killing is murder ; if it appear that he was ignorant in this respect, it is manslaughter only. Where a bailiff rushed into a gentleman's bed-chamber early in the morning, without giving the slightest intimation of his business, and the gentleman, not knowing him, in the impulse of the moment wounded him with his sword, and killed him : this was holden to be manslaughter. But where the bailiff or constable shews the warrant ; or where it appears that he is known to the defendant to be an officer ; as, for instance, when the defendant said, " Stand off, I know you well enough, come at your peril ; " if after this the officer be killed, it will be murder. If the constable interfere to prevent an affray within his own vill, if

he be killed by one of the inhabitants, or other person, who knows him to be the constable, it will be murder; if by a stranger who does not know him, it is manslaughter. So, if one of several know him to be a constable, it will be murder in him, manslaughter in the rest. If a constable command the peace, or shew his staff of office, this it seems is a sufficient intimation of his authority. And in such a case it is not necessary to prove the deceased's appointment as constable; proof that he was accustomed to act as constable is sufficient. But private persons, when they interfere, must expressly intimate their intention, otherwise killing them will be manslaughter only. In all the cases, however, above stated to be manslaughter only, if there be evidence of express malice in the party killing, the homicide will be murder.

Killing by officers. Where an officer of justice, in endeavouring to execute his duty, kills a man, this is justifiable homicide, or manslaughter, or murder, according to circumstances. 1. Where an officer of justice is resisted in the legal execution of his duty, he may repel force by force; and if in doing so he kill the party resisting him, it is justifiable homicide: and this in civil as well as in criminal cases. And the same as to persons acting in aid of such officer. Thus, if a peace officer have a legal warrant against B for felony, or if B stand indicted for felony, or if hue and cry be levied against B—in these cases if B resist, and in the struggle be killed by the officer, or any person acting in aid of him, or joining in the hue and cry, the killing is justifiable. So, if a private person attempt to arrest one who commits a felony in his presence, or interfere to suppress an affray, and be resisted, and kill the person resisting, this is also justifiable homicide. And this, not merely on the principle of self-defence, for the officer or private person is not bound to retreat, as in the case of homicide *se defendendo*, but upon that principle, and the necessity of executing the duty the law has imposed upon him, jointly. Still there must be an apparent necessity for the killing; for if the officer were to kill after the resistance had ceased, or if there were no reasonable necessity for the violence used upon the part of the officer, &c, the killing would be manslaughter at the least. Also, in order to justify an officer or private person in these cases, it is necessary that they should, at the time, be in the act of legally executing a duty imposed upon them by law, and under such circumstances, that, if the officer or private person were killed, it would have been murder; for if the circumstances of the case were such, that it would have been manslaughter only to kill the officer or private person, it will be manslaughter at least in the officer or private person to kill the party resisting.—2. If the prisoners in a jail, or going to jail, assault the jailor, or officer, and he in his defence kill any of them, it is justifiable, for the sake of preventing an escape.—3. Where an officer or private person, having legal authority to apprehend a man, attempts to do so, and the man, instead of resisting, flies, or resists and then flies, and is killed by the officer or private person in the pursuit—if the offence with which the man was charged were a treason or felony, or a dangerous wound given, and he could not otherwise be apprehended, the homicide is justifiable: but if charged with a breach of the peace, or other misdemeanor merely; or if the arrest were intended in a civil suit; the killing in such cases would be murder,—unless, indeed, the homicide were occasioned by means not likely or intended to kill, such as tripping up his heels, giving him a blow of an ordinary cudgel or other weapon not likely to kill, or the like; in which case the homicide at most would be manslaughter only.—4. In a case of a riot or rebellious assembly, the officers endeavouring to disperse the mob are justifiable in killing them, if the riot cannot otherwise be suppressed.—5. Where a criminal is executed by the proper officer, in pursuance of his sentence, this is justifiable homicide. But if it be done by any other person, or not done in strict conformity with the sentence, as, for instance, if an officer behead one who is adjudged to be hanged, or the contrary, it is murder. *Archbold.*

SECTION V.

OF THUGGEE.

4003. All proceedings connected with cases of thuggee are to be written in Oordoo Hindoostanee; but the depositions and confessions of thugs should be taken down in the language best understood by them, and the general superintendent of operations for the suppression of thuggee should be furnished with translations of any documents, written in the Bengalee or other language, which he may require. C. O. No. 241 of vol. 2, and *L. P.* No. 16 of vol. 3.

Language to be used in the proceedings of thuggee cases.

4004. The word “thug” when used in any Act heretofore passed by the council of India, is to be taken to have meant and to mean a person, who is, or has at any time been, habitually associated with any other or others for the purpose of committing, by means intended by such person or known by such person to be likely to cause the death of any person, the offence of child-stealing, or the offence of robbery not amounting to dacoity. And the word “thuggee” when used in such Acts is to be taken to have meant and to mean the offence of committing or attempting any such child-stealing or robbery by a thug. And the expression “murder by thuggee,” when used in such Acts, is to be taken to have meant and to mean murder when employed as the means of committing such child-stealing or such robbery by a thug. Act III. 1848.

Meaning of the expressions—thug,

thuggee,

and murder by thuggee.

4005. Whoever is proved to have belonged, either before or after the passing of this Act, to any gang of thugs, either within or without the territories of the East India Company, is to be punished with imprisonment for life with hard labor.(a) Act XXX. 1836, sect. 1.

Punishment for belonging to a gang of thugs.

4006. Within the territories subject to the government of the East India Company, whenever any court not included under the provisions of Act XIV. 1844* sentences any offender to imprisonment for life under the above provisions, it is at the same time to sentence such offender to transportation beyond sea for life, unless there should be special reasons inducing the court to think such prisoner not a proper subject for transportation, which special reasons the court is required to record. Act X. 1847.

Sentence of imprisonment for life to include transportation for life.

* See para. 1490.

4007. Any person charged with murder by thuggee, or with the offence of having belonged to a gang of thugs, made punishable by Act XXX. 1836, may be committed by any magistrate or joint magistrate within the territories of the East India Company, for trial before any criminal court competent to try such person on such charge. Act XVIII. 1837.

Persons charged with murder by thuggee, or belonging to a gang of thugs, may be committed by any magistrate;

4008. This does not authorize a magistrate to commit for an *attempt* at thuggee, when such offence has not been perpetrated in his jurisdiction. Reports *L. P.* 1851, page 82.

but not for an attempt at thuggee.

(a) Before the passing of this Act, the nizamat adawlut held that the charge of being a thug was not a specific charge on which the prisoner could be punished. N. A. R. vol. 1, page 239.

Persons charged with belonging to a gang of thugs may be tried by any sessions court ;

4009. Every person accused of the offence made punishable by this Act, may be tried by any court which would have been competent to try him, if his offence had been committed within the zillah where that court sits, any thing to the contrary in any regulation contained notwithstanding. Act XXX. 1836, sect. 2.

but not for specific acts of thuggee committed without the Company's territories.

4010. The above provision does not authorize the session judge, without first having obtained the authority of government, to try prisoners charged with specific acts of murder by thuggee and plunder of property, when such acts have been committed beyond the territories of the East India Company. Const. No. 1213.

Persons accused of murder by thuggee, or receiving property stolen by thuggee, may be tried by any sessions court.

4011. Any person accused of the offence of murder by thuggee, or of the offence of unlawfully and knowingly receiving or buying property stolen or plundered by thuggee, may be tried by any court which would have been competent to try him if his offence had been committed within the zillah where that court sits, anything contained in any regulation or regulations to the contrary notwithstanding. Act XVIII. 1839.

The appointment of a special judge does not bar the jurisdiction of ordinary courts.

4012. Under the above provisions the appointment of a special session judge, for the trial of cases of thuggee, does not bar the jurisdiction of the ordinary sessions courts in cases of that nature. At the same time, the session judges are required to abstain from trying any commitments made by the assistants to the general superintendent for the suppression of thuggee, when a session judge has been specially appointed for that purpose. N. A. R. vol. 5, page 89. C. O. No. 11 of vol. 3. *L. P.*

Acquittal of general charge does not bar trial for specific crime.

4013. A previous acquittal of the prisoner on a charge of being a thug by profession, and of having associated with and belonged to a gang of thugs, is no bar to his trial for specific acts of thuggee, although they were committed before the first trial. Reports *L. P.* 1856, part 1, page 915.

Futwa not to be taken on charge of belonging to a gang of thugs.

4014. No court is, on a trial of any person accused of the offence made punishable by this Act (*para.* 4005), to require any futwa from any law officer. Act XXX. 1836, sect. 3.

But futwa must be taken on charge of specific acts of murder and thuggee.

4015. But the above provisions do not authorize a session judge to dispense with a futwa on the trial of a prisoner charged with specific acts of murder and thuggee ; unless the prisoner be tried under the provisions of Reg. VI. 1832, *i. e.* with the aid of a panchayat, assessors, or a jury. Const. No. 1074.

Rules under which a promise of a qualified pardon may be made to thugs on condition of becoming approvers ; but such pardon is only to exempt from capital punishment and from transportation.

4016. A magistrate (or joint-magistrate, or deputy superintendent for the suppression of thuggee vested with the powers of a joint-magistrate) is authorized to offer mercy, in the name of the government, to any thug from whom he has reason to expect that useful information may be procured, on condition that he makes a full and ingenuous confession. But the promise which he is authorized to make is not a promise of entire pardon, for government will not consent to let any such offenders loose on society, however long the period of their confinement may have been, however unexceptionable their demeanour during that confinement may have been, or whatever may have been the value of the information given by them. The magistrate is in no case therefore, without the special permission of government, to hold out to any thug any hope that he will ever be set at liberty. The mercy which a magistrate is authorized to promise extends only to exemption

from capital punishment and transportation, and to such indulgences in confinement as may be compatible with the safe keeping of the prisoner. Every promise of this sort which a magistrate gives, the government holds itself bound to perform, even though it should appear that in giving such a promise he has not exercised a sound discretion. Such promises may be made either to persons who have been convicted, or to persons who have not yet been tried : and in the former case the punishment will, on the report of the magistrate that the convict has made a confession which he considers as full and ingenuous, be commuted by government according to the engagements which he may have made : but, as nothing short of a sentence pronounced by a court of justice and recorded on the proceedings of that court can be sufficient ground for detaining any person in perpetual imprisonment, every promise of mercy made to a thug, who has not already been convicted, must be followed up by his regular trial and conviction. The magistrate is, in the first instance, to place on record a faithful narrative of the prisoner's life of crime, noting every thuggee in which he has been employed, the names of the thugs who have been engaged in each expedition, their respective crimes and occupations in each journey, and generally to enter into as full a detail as possible, informing the person who offers himself as an approver, that for any wilful omission on his part he will forfeit the qualified pardon held out to him : after this unreserved confession the magistrate is to examine a few thug approvers as to his being a real thug, and is then to commit him for trial before the session judge on the charge of having been guilty of the offence made punishable by Act XXX. 1836, explaining to him that if he pleads guilty to that minor offence, he will not be put on his trial for any capital crime which he may have committed as a thug. His conviction will under such circumstances be a matter of course ; it will give scarcely any trouble to the court by which he may be tried ; it will under Act XIX. 1837* leave him a competent witness ; and he will be detained for life in confinement under an authority which can never be questioned, and in a strictly regular manner. C. O. No. 247 of vol. 2. *L. P.*

And every approver must be committed for trial and convicted of having belonged to a gang of thugs, in order to ensure the legality of his detention and imprisonment for life.

* *v. paras.* 544 and 550.

4017. There are no particular rules for the trial of thug prisoners under the provisions of Act XXX. 1836 ; but the session judge is to be careful to affix to the record of each trial the tender of exemption from the punishment of death and transportation beyond seas, which the magistrate will have made to the prisoner, and the prisoner's acceptance thereof. C. O. No. 246 of vol. 2. *L. P.*

The offer and acceptance of pardon by the approver must be affixed to the record of each trial.

4018. Magistrates are to require their police officers always to exert themselves most particularly, on the receipt of descriptive rolls of thugs from the officers of the thuggee department, for the purpose of their apprehension, &c. ; and any neglect or inattention to the requisitions of those officers on the part of a police officer will be considered as a very serious offence, rendering him liable to removal from office. C. O. Sup. Pol. *L. P.* No. 15 of 1840.

Police officers to give every assistance to the officers of the thuggee department.

4019. Three prisoners convicted of murder by thuggee were sentenced to suffer death ; four others, convicted of assisting in the murder by holding the feet of the murdered persons, to imprisonment in transportation for life ; and the remaining prisoners, as associates and accomplices, to imprisonment for life in banishment. N. A. R. vol. 3, page 1.

Precedent of trial.

SECTION VI.

OF SUTTEE.

Suttees are illegal.

4020. The practice of suttee, or of burning or burying alive the widows of Hindoos, is declared illegal, and punishable by the criminal courts. Reg. XVII. 1829, sect. 2.

All landholders are declared responsible for immediate information of intended suttees.

4021. All zumeendars, talookdars, or other proprietors of land, whether malguzaree or lakhiraj; all sudder farmers and under-renters of land of every description; all dependent talookdars; all naibs and other local agents; all native officers employed in the collection of the revenue and rents of lands on the part of government, or the court of wards; and all munduls or other head men of villages; are especially accountable for the immediate communication to the officers of the nearest police station of any intended sacrifice of the nature described in the foregoing section; and any zumeendar, or other description of persons above noticed, to whom such responsibility is declared to attach, who is convicted of wilfully neglecting or delaying to furnish the information above required, is liable to be fined by the magistrate or joint-magistrate in any sum not exceeding 200 rupees, and in default of payment to be confined for any period of imprisonment not exceeding 6 months. Reg. XVII. 1829, sect. 3, cl. 1.

Penalty in cases of neglect.

Police to report cases of such neglect

4022. Police officers are to report to the magistrate any omission, or unnecessary delay, on the part of the persons above noticed, in furnishing the promptest information regarding any such intended sacrifice. C. O. No. 43 of vol. 2.

Police darogah how to act on receiving intelligence of intended suttee.

4023. Immediately on receiving intelligence that the sacrifice, declared illegal by this regulation, is likely to occur, the police darogah is either to repair in person to the spot, or to depute his mohurir or jemadar, accompanied by one or more burkundazes of the Hindoo religion; and it is the duty of the police officers to announce to the persons assembled for the performance of the ceremony that it is illegal, and to endeavour to prevail on them to disperse; explaining to them that, in the event of their persisting in it, they will involve themselves in a crime, and become subject to punishment by the criminal courts. Should the parties assembled proceed, in defiance of these remonstrances, to carry the ceremony into effect, it is the duty of the police officers to use all lawful means in their power to prevent the sacrifice from taking place, and to apprehend the principal persons aiding and abetting in the performance of it; and in the event of the police officers being unable to apprehend them, they are to endeavour to ascertain their names and places of abode, and are immediately to communicate the whole of the particulars to the magistrate for his orders. Reg. XVII. 1829, sect. 3, cl. 2.

Darogah to report if he does not proceed himself; or to explain cause of delay if the police do not arrive in time.

4024. When the darogah deposes his mohurir or jemadar to proceed to the spot, he is immediately to report to the magistrate the cause which has prevented his going in person; and in any instance in which the sacrifice has commenced, or has been completed, prior to the arrival of the police, a minute report of the circumstances which have operated to prevent their early arrival must be submitted to the magistrate. In giving effect to the above

provisions, the police officers are directed to employ every means of dissuasion and remonstrance, to endeavour to associate with themselves any respectable Hindoos in persuading the parties concerned to desist from the sacrifice, and to use all patience and forbearance in the exercise of the duty prescribed. C. O. No. 43 of vol 2.

And police officers to associate respectable Hindoos with themselves.

4025. Should intelligence of a sacrifice declared illegal by this regulation not reach the police officers until after it has actually taken place, or should the sacrifice have been carried into effect before their arrival at the spot, they are nevertheless to institute a full enquiry into the circumstances of the case in like manner as on all other occasions of unnatural death, and to report them for the information and orders of the magistrate to whom they are subordinate. Reg. XVII. 1829, sect. 3, cl. 3.

Police officers how to act when they do not hear of a suttee until after it has taken place.

4026. Police officers arriving at the spot after the completion of the suttee, are not authorized to take parties into custody before instituting enquiries to ascertain who have aided in the performance of the sacrifice; they should merely make the enquiry and report the result to the magistrate, as directed above. Const. No. 598.

In such case they cannot apprehend the persons implicated.

4027. Police officers are to use all care and discretion in giving effect to these orders; and are in each case to be held bound to show that every means of mildness was resorted to, before recourse was had to any exercise of authority. They are in no case to use any duress towards any persons apprehended under these rules; but are to treat them with every indulgence, and in sending them to the magistrate are to allow them every facility not inconsistent with their safe custody.(a) But these instructions are not to be understood as prohibiting the use of force in the event of an attempt to persist in performing the ceremony after due warning. C. O. No. 43 of vol. 2. Const. No. 749.

Force is not to be employed by police officers to prevent a suttee until mildness has proved ineffectual.

Prisoners how to be treated.

4028. On the receipt of the reports required to be made by the police darogahs, under the foregoing provisions, the magistrate of the jurisdiction, in which the sacrifice has taken place, is to enquire into the circumstances of the case, and is to adopt the necessary measures for bringing the parties concerned in promoting it to trial before the sessions court. Reg. XVII. 1829, sect. 4, cl. 1.

Magistrate how to proceed on receiving report.

4029. All persons convicted of aiding and abetting in the sacrifice of a Hindoo widow by burning or burying her alive, whether the sacrifice be voluntary on her part or not, are to be deemed guilty of culpable homicide, and are liable to punishment by fine, or by imprisonment, or by both fine and imprisonment, at the discretion of the sessions court, according to the nature and circumstances of the case and the degree of guilt established against the offender; nor is it to be held to be any plea of justification, that he or she was desired by the party sacrificed to assist in putting her to death. Reg. XVII. 1829, sect. 4, cl. 2.

Persons convicted of aiding and abetting in suttee, liable to what punishment.

4030. As the crime of aiding and abetting in a suttee is expressly declared by the above provision to be culpable homicide, conviction of which latter offence includes liability

Labor may be adjudged.

(a) The rules of this circular were drawn up at the desire of the governor general in order to allay, as much as possible, the popular agitation, which the suppression of suttees was expected to arouse, when it was felt that "great allowance should be made for the feelings and prejudices of the people." It would seem therefore unnecessary now to act upon these rules very strictly, as there appears no reason why suttee should not be treated at present as any other case of culpable homicide.

to labor, the same penalty is awardable in the former case also. [This supersedes Const. No. 1125.] C. O. No. 70 of vol. 3.

The prisoners
may be admitted to
bail.

4031. Persons committed to take their trial before the sessions court, for the offence above mentioned, are to be admitted to bail or not at the discretion of the magistrate, subject to the general rules in force in regard to the admission of bail. Reg. XVII. 1829, sect. 4, cl. 3.

Prisoners not ad-
mitted to bail, how
to be treated.

4032. With the exception of aggravated cases, in which recourse has been had to stupefaction or violence, the magistrate is enjoined to abstain from using irons, handcuffs, or other unnecessary duress towards any persons apprehended under these rules; and, in any case deemed not bailable, the prisoners are invariably to be confined in the civil jail, and never in the criminal jail. (a) C. O. No. 43 of vol. 2.

The nizamat
adawlut may pass
sentence of death
in certain cases.

4033. Nothing contained in this regulation is to be construed to preclude the nizamat adawlut from passing sentence of death on persons convicted of using violence or compulsion, or of having assisted in burning or burying alive a Hindoo widow, while laboring under a state of intoxication or stupefaction, or other cause impeding the exercise of her free-will, when, from the aggravated nature of the offence proved against the prisoner, the court may see no circumstances to render him or her a proper object of mercy. Reg. XVII. 1829, sect. 5.

Precedents of
trial.

4034. Three prisoners convicted of aiding and abetting in a suttee were sentenced, two as the relations of the widow to imprisonment for one year, and the third for 6 months. (b) N. A. R. vol. 4, page 308. In a case of voluntary suttee, the father of the woman was sentenced to imprisonment for 7 years, four of the principal aiders and abettors for 5 years, and the others for one year. Two of the prisoners were released on appeal by the sudder court "in the absence of direct evidence of any active participation." Reports *W. P.* 1854, part 1, page 357. Another person subsequently convicted as an accomplice in the same suttee was sentenced to two years' imprisonment and fine in lieu of labor. Reports *W. P.* 1854, part 2, page 433.

(a) See preceding note.

(b) The above-noted are the only cases reported since the enactment of Reg. XVII. 1829. In the reports of illegal suttees, for which the aiders and abettors were brought to trial previously, the sentence was never more severe than imprisonment for 3 years; N. A. R. vol. 2, pages 179, 274, 279, 283, 286, 320, 391, and 392; and vol. 8, page 229: except where force was used to the widow to compel the sacrifice, in which case the sentence was for imprisonment for 5 years; N. A. R. vol. 2, page 91; and vol. 3, page 31: and in a case where the prisoner was sentenced to 7 years' imprisonment for assisting his daughter to burn herself with the corpse of her brother; N. A. R. vol. 2, page 246.

CHAPTER IV.

OF THEFT OF THE PERSON.

SECTION I.

OF PERSONS MISSING.

4035. Where the prisoner was convicted of wilful murder on his own confession, and pointed out a corpse as that of the murdered person which was, however, in such a state of decomposition that it could not be recognized, it was held that absence of proof as to the identity of the body was not sufficient to bar a capital sentence, and he was sentenced to death; *N. A. R. vol. 2, page 104*:—so, where no body was found, but the prisoner confessed to the murder, and there were marks of blood, and of the rolling or struggling of a body on the spot pointed out by the prisoner as that on which he killed the deceased, he was sentenced capitally; *N. A. R. vol. 2, page 257*. So, where the murder was clearly established against the prisoners, they were sentenced to death, although the body of the deceased was never found; *N. A. R. vol. 3, page 175*. But it has been held more frequently that a revocable sentence should be passed when, although the fact of the murder was fully proved, the body could not be found; and the prisoners were accordingly sentenced to imprisonment for life; *N. A. R. vol. 3, page 339; vol. 4, pages 91, 140, 148, and 319*. Where the sentence would have been imprisonment for life if the body had been found, its absence was not admitted in mitigation; *N. A. R. vol. 4, pages 138, and 145*. And sentence of imprisonment for life has been passed, where the actual death of the person supposed to be murdered was uncertain, no body being found, and the prisoners were sentenced only for the intent to kill; *N. A. R. vol. 1 page 17, and vol. 3, page 332*:—so, where there was no proof of the murder except that the prisoner confessed to having witnessed it, and to having some of the money plundered from the deceased, and the body could not be found; *N. A. R. vol. 3, page 43*:—so, where the prisoner was an accomplice in a river dacoity, and the missing person was presumed to have been drowned in endeavouring to escape from the robbers; *N. A. R. vol. 1, page 204*:—so, where the prisoners were convicted of embezzling goods in a fraudulent transaction, and there were strong grounds for presuming that they had made away with the owner and two other persons who were missing; *N. A. R. vol. 1, page 324*.—Where the murder was not proved, but the prisoners were convicted of severely maltreating a person since missing and of seizing his muth and property, they were sentenced to imprisonment for 14 and 7 years respectively; *N. A. R. vol. 1, page 121*.—When the prisoners have been convicted on violent presumption of having made away with persons, of whom nothing had been heard since they were seen in the prisoner's company, it has been usual to pass sentence of imprisonment

In cases of murder, when the body has not been found, the prisoner has sometimes been sentenced to death;

but generally to imprisonment for life:

so, where the fact of the murder was not clearly proved.

Conditional sentence of imprisonment until the missing persons were found;

but the practice of conditional sentences has been lately held to be objectionable.

Case of acquittal for want of evidence.

until the missing person be produced, or it be proved that he died by means not implicating the prisoner; *N. A. R. vol. 1, pages 226, 305; vol. 2, pages 46, 84; vol. 4, pages 47 and 327*;—so, in a similar case, where the finding a skull, recognized as that of the missing boy by a peculiarity in the jaw-bone, was held not to be sufficient proof of identity to prove the actual murder, and consequently to warrant a capital sentence; *N. A. R. vol. 3, page 122*;—and where the presumptive evidence was very strong that the prisoner had murdered the missing girl, he was sentenced to imprisonment for life with the express proviso that the sentence would be altered if the missing girl were found, or her death accounted for to the exculpation of the prisoner; *N. A. R. vol. 4, page 136*:—but in later cases it has been held objectionable to pass such conditional sentence, as it tended to throw a doubt on the evidence on which the sentence was grounded; and the prisoners were therefore sentenced at once to such terms of imprisonment as appeared suited to their respective degrees of guilt; *N. A. R. vol. 5, pages 21, 147*. [A conditional sentence of this nature is said to be objectionable when there is no presumption that the missing person has been murdered; see *para. 4048*; but a conditional sentence of definite duration has sometimes been passed, when there was no presumption of murder, with a view to encourage the production of the missing person; see *para. 4049*.] Where the prisoners were convicted of beating a person since missing, but the injury inflicted was not deemed by the court sufficient to cause death, they were sentenced to imprisonment for one year; *N. A. R. vol. 2, page 305*. The fact that the missing persons had embarked with their property in the prisoners' boat, and had not been heard of since last seen in their company, was not considered evidence sufficient to warrant a sentence of conditional imprisonment as above, although the prisoners could bring no evidence to substantiate their assertion that the missing persons left their boat at a particular place of their own accord; and they were acquitted; *N. A. R. vol. 2, page 336*.

SECTION II.

OF ABDUCTION.

Persons guilty of enticing, or of causing to be enticed from their homes, married women, or unmarried female minors, liable to what punishment by order of magistrate;

4036. If any person amenable to the jurisdiction of the zillah and city courts is convicted before a magistrate, or joint magistrate, of the offence of enticing and taking away, or causing to be enticed and taken away, a married woman living under the protection of her husband, or of any person having the care of her in his behalf; or of enticing and taking away, or causing to be enticed and taken away, an unmarried female under the age of maturity, viz. fifteen years, and living with her parents or other legal guardians, or any persons acting in their behalf; for the purpose of rendering such married woman, or unmarried female minor, a prostitute or concubine, or otherwise disposing of her in an unlawful manner, without the consent of the husband, parent, or other guardian, of the woman or minor thus disposed of; the person so convicted is liable to a sentence of fine

and imprisonment, to such extent as may appear adequate to the circumstances of the case, and does not exceed the powers vested in the magistrates by sect. 19, Reg. IX. 1807, viz. imprisonment for 6 months, and a fine not exceeding 200 rupees, commutable if not paid to a further period of imprisonment not exceeding 6 months. If in any instance the offender appears to merit a more severe punishment, he is to be committed for trial before the sessions court; and the provisions of sect. 6, Reg. XVII. 1817* are applicable to all such commitments [i. e. the futwa of the law officer, before whom the trial is held, is to declare only whether the prisoner is legally convicted, or if not whether there is strong ground of presumption, arising from his free confession, or from credible testimony, or from circumstantial evidence, that he is guilty of the crime charged against him: and if the futwa so given declares the prisoner legally convicted, or that there is strong presumption of his guilt, and the session judge before whom the trial is held concurs in the conviction of the prisoner or in the presumption of his guilt, so as to render him a proper object of punishment, and the circumstances of the case do not appear to call for a more severe punishment than what the sessions courts are authorized to adjudge under cl. 7, sect. 2, Reg. LIII. 1803,* the judge is to sentence the prisoner to suffer such punishment as is adequate to his guilt and the nature of the offence, not exceeding corporal punishment and imprisonment with hard labor for the term of 7 years]. Reg. VII. 1819, sect. 2.

and by order of session judge.

* r. para. 3026.

* v. para. 1311.

4037. The above provisions do not apply to cases of *forcible* abduction; and as such an offence is not one which the judge is specifically empowered by the regulations to punish, the trial must, if conducted with the aid of a jury, be referred to the sudder court under cl. 1, sect. 4, Reg. VI. 1832. Reports *W. P.* 1853, part 2, page 1219.

This does not apply to cases of forcible abduction.

4038. Assistants with special powers are competent to dispose of such cases. C. O. No. 7 of vol. 4.

Power of assistant.

4039. A suit for the recovery of damages in a civil court can be legally sustained against a party, who has already been punished for abduction by a sentence of a criminal court. Const. No. 1251.

Sentence under the above rule does not bar a civil suit for damages.

4040. A prisoner convicted (before the enactment of the above regulation) of the forcible abduction of a girl, aged 16, was sentenced to imprisonment for one year, and at the expiration of that period to be further imprisoned until he should produce the missing girl, or account satisfactorily for her non-appearance. In this case the prisoner had married the elder sister, and on her death wished to take the younger for his wife; and on the mother's refusal to consent committed the outrage for which he was tried. N. A. R. vol. 1, page 332.

Precedents of trial.

4041. A woman was convicted of inveigling the daughter of the prosecutor from his house with jewels, to accomplish which object she and the daughter administered deleterious drugs to the prosecutor and his family: the woman was sentenced to 7, and the daughter to 5 years' imprisonment: and two men who aided and abetted in the inveigling were sentenced, one to 30 stripes and 5 years, and the other to 20 stripes and 3 years' imprisonment. N. A. R. vol. 4, page 84.

SECTION III.

OF CHILD-STEALING.

Complaints of female child stealing to be disposed of as cases of abduction, if the provisions of sect. 2, Reg. VII. 1819 are applicable.

* See para. 4036.

Cannot be punished under the rules applicable to theft.

A girl of 11 going with her own consent cannot be said to be stolen.

There can be no theft, if the child was not under 10 years of age.

Charge.

If tried with the aid of a jury, trial must be referred.

4042. If, on a complaint of female child-stealing, it appears that the circumstances of the case clearly bring it within the intent and meaning of sect. 2, Regulation VII. 1819*, it is to be taken up under it, the charge against the accused being so framed as to correspond with the exact words of the section. On conviction the magistrate is either to proceed to dispose of the case himself by passing sentence upon the defender within the limit of sect. 19, Reg. IX. 1807; or, if that sentence appear to him inadequate, by committing the case to the session judge, in order that he may dispose of it, under the provisions of sect. 6, Reg. XVII. 1817. C. O. No. 81 of vol. 4. *W. P.*

4043. Child-stealing is not an offence which magistrates can try under Reg. XII. 1818. The offenders must invariably be committed to the sessions. This has been ruled by both courts in correspondence which passed between them in 1847. Letter of N. A. to Judge of Jessore, No. 210, February 20, 1852. Reports *L. P.* 1852, part 2, page 77. The offence of child-stealing is quite distinct from that of theft or robbery, and it is not punishable under the laws which apply to the latter. Reports *W. P.* 1853, part 2, page 1238.

4044. Where the girl, of the theft of whom the prisoner was accused, was 14 years' of age, and it was proved that she had gone willingly with the prisoner and remained with her without constraint, it was held that the charge of child-stealing could not be sustained. Reports *W. P.* 1854, part 1, page 826.

4045. Where the child, of the theft of whom the prisoners have been accused, was not under ten years of age, it has been held that they could not be convicted of child-stealing. The Mahomedan and the English law both rule that boys and girls of that age are competent to exercise their own will; and cannot therefore be compelled to accompany other persons. The prisoners may however be charged with theft of the ornaments which the children may wear at the time; or with abduction.(a) But as the charge of theft will not lie, so neither can a person be charged with the criminal receipt of the child under such circumstances. Reports *W. P.* 1854, part 1, page 826; and 1855, part 1, pages 491, 675, 777, 809, 885.

4046. On a charge of stealing and selling a child, there can be a conviction for carrying away and selling it. N. A. R. vol. 6, page 322. But not for inveigling and enticing a child from his home for illegal purposes. Reports *W. P.* 1855, part 1, page 697.

4047. Child stealing is not an offence which session judges are specifically empowered by the regulations to punish; and therefore, when the case is tried with the assistance of a

(a) But a charge of abduction cannot be laid under sect. 2, Reg. VII. 1819 if the child has been forcibly carried off. Reports *W. P.* 1853, part 2, page 1219.

jury, it must be referred to the sudder court, under cl. 1, sect. 4, Reg. VI. 1832. Reports *W. P.* 1852, page 1130.

4048. Two prisoners convicted of secretly getting possession of a girl, 8 years of age, and afterwards from fear of discovery deserting her in such a manner as to cause her death; there being also a strong presumption that she had been murdered, and that they were concerned in it; were sentenced to imprisonment for life; *N. A. R. vol. 2, page 389*. Seven prisoners were convicted of stealing and selling a child, who was never recovered; and two of them of a second offence of the same nature, in which case however the child was recovered: in the first case, there being no sufficient ground for supposing that the child had been murdered, the court preferred a definite to an indefinite period of imprisonment, as suggested by the law officers (until the girl should be restored), and sentenced the prisoners to imprisonment for 7 years: in the second case, the two prisoners previously convicted were sentenced to 2 years' additional imprisonment, and a third as an accomplice for the single offence to imprisonment for 2 years: there were grounds for believing that all the prisoners convicted in the first case had for some time made a trade of stealing and selling female children; *N. A. R. vol. 2, page 66*. A woman convicted in two cases of child-stealing was sentenced by the session judge to imprisonment for 4 years; but the nizamat adawlut called for the proceedings and enhanced the term of imprisonment to 10 years; *N. A. R. vol. 5, page 57*:—so, where two prisoners were convicted of enticing away a boy and selling him into slavery, and the session judge sentenced them to imprisonment for one year in addition to the confinement which they had already undergone, the court called for the case, and sentenced them to imprisonment for 7 years; *N. A. R. vol. 5, page 30*. A prisoner convicted of administering poisonous [or intoxicating] drugs to a whole family with a view to carry off one of the children, aged 11 years, while they were in a state of insensibility, was sentenced to imprisonment for 7 years; *N. A. R. vol. 3, page 21*. A prisoner convicted of having kidnapped a girl 8 years of age, and of offering to sell her, was sentenced to 30 stripes and imprisonment for 7 years; and another, convicted of concealing his knowledge of the kidnapping and of aiding in the intended sale, to imprisonment for 2 years; *N. A. R. vol. 1, page 337*.

Precedents of cases: attended with death;

with selling the children;

with administering deleterious drugs.

Privity.

4049. A prisoner, convicted of carrying away and selling a girl 5 years of age, was sentenced to 4 years' imprisonment, and a further period of 3 years, unless she should furnish information which might lead to the discovery of the missing child; *N. A. R. vol. 2, page 308*:—and it was held to be within the competence of a session judge to pass such conditional sentence, where the whole term of imprisonment does not exceed the period of 7 years; *N. A. R. vol. 2, page 447. Reports L. P. 1855, part 1, page 175*.

Conditional sentence in such cases for a definite period.

4050. In a case of forcible abduction of a girl by a relation with the purpose of giving her away in marriage without the consent of her guardian, the prisoner was sentenced to imprisonment for 18 months and fine of 50 rupees in lieu of labor. *Reports L. P. 1852, part 2, page 77*.

In order to give the girl in marriage.

4051. Four prisoners convicted of aiding and abetting in the illegal detention of five girls, between 15 and 18 years of age, with intent to dispose of them in an unlawful

Attempt to sell girls for the purposes of prostitution.

manner,—though it does not appear by what means they fell into the power of the prisoners, who carried them about the country in a boat and endeavoured to sell them for the purposes of prostitution,—were sentenced to imprisonment for 5 years. *N. A. R. vol. 6, page 4.*

Case of child-stealing in a foreign territory, and bringing him into the British provinces.

4052. An inhabitant of Lahore carried away a child without the knowledge of his parents, inhabitants of the same state, and settled in the British territories, in which he was accused by the parents and proved to have committed the crime. Held, that though the prisoner could not be tried in our courts for the child-stealing, as the act was committed in a foreign territory, yet he might be committed on the minor charge of retaining in his possession a child knowing him to have been stolen. Const. No. 1043.

SECTION IV.

OF SLAVERY.

The importation of slaves is a penal offence,

4053. The importation of slaves whether by land or by sea into the places immediately dependent on the presidency of Fort William, is strictly prohibited; and any person infringing this prohibition is liable to be prosecuted and punished for the offence by the courts of criminal judicature. Reg. X. 1811, sect. 2.

punishable by imprisonment and fine.

4054. Any person, who is convicted of the offence of importing slaves into the British territories, is to be sentenced to imprisonment for the period of 6 months, and to pay a fine to government, according to his circumstances in life, not exceeding however the sum of 200 rupees, commutable, if not duly discharged, to imprisonment for the further period of 6 months on the expiration of the former part of the sentence. Reg. X. 1811, sect. 3.

Disposal of persons so imported as slaves.

4055. Persons imported as slaves into the British territories are liable to be discharged, or sent back to their friends and connections in the country from which they have been imported, according as it appears most advisable to the magistrate by whom the decision on the case is passed. Reg. X. 1811, sect. 4.

The above provisions are applicable only to imported slaves.

4056. The above provisions are applicable only to the importation of slaves for the purpose of being sold, given away, or otherwise disposed of; and cannot be applied to the sale of slaves not imported into the British territories. C. O. No. 141 of vol. 1. Const. No. 99.

All slaves imported into a British province from any British or foreign province, are declared free.

4057. All slaves who subsequently to the enactment of the above provisions have been or may hereafter be removed by sea or land for purposes of traffic from any country, territory, or province, British or foreign, into any province now dependent, or that may become hereafter dependent on the presidency of Fort William, subsequently to the date on which it has or may become so dependent; or who have been or may be so removed from one province that now is or may hereafter become dependent, subsequently to the dates on

which they respectively have or may become dependent; are hereby declared free.(a)
Reg. III. 1832, sect. 2, cl. 1.

4058. All persons concerned in the sale or purchase as a slave of any man, woman, or child so removed, knowing him or her to have been so removed, on conviction thereof before a magistrate, are liable to be sentenced to imprisonment for the period of 6 months, and to pay a fine to government according to their circumstances in life not exceeding the sum of 200 rupees, commutable, if not duly discharged, to imprisonment for the further period of 6 months on the expiration of the former part of the sentence. Reg. III. 1832, sect. 2, cl. 2.

Persons concerned in the sale or purchase of slaves so removed, are punishable by fine and imprisonment.

4059. Reg. III. 1832 does not prohibit the transfer of slaves for money, or other consideration, between persons residing within the British territories; it merely prohibits the removal of them for the purpose of traffic from one territory, British or foreign, to any other territory dependent on this presidency: consequently those slaves only are entitled, under its provisions, to their liberty, who have been so removed subsequently to the enactment of Reg. X. 1811. Const. No. 955.

This does not prohibit the transfer of slaves for money, if not removed from one territory to another.

4060. The selling of free-born persons is prohibited by the Mahomedan law; and persons convicted thereof are liable to discretionary punishment. N. A. R. vol. 6, page 4. And according to a futwa of the kazi-ul-kuzat, dated September 8, 1853, it appears that in such cases the law makes no distinction between the seller and the purchaser. Both are equally punishable. It seems that a parent is not punishable, who sells his child during a time of famine in order to preserve his own life, unless it be sold for the purposes of prostitution. See also Reports *L. P.* 1853, part 1, page 630.

Selling free-born persons is an offence. So is buying.

4061. When certain prisoners were committed for selling and purchasing a woman, on the prosecution of government, it was held that the woman alone could legally appear as prosecutor against the accused; and that the accused must be discharged, without reference to the merits of the case, because there was not on the record any complaint in writing on the part of the woman. Held also, that, as the offence is only a misdemeanour, it was not competent to the police officers to take cognizance of it. Reports *W. P.* 1855, part 2, page 560.

The complaint must be made by the person aggrieved. The prosecutor cannot be on the part of government.

4062. No public officer is in execution of any decree or order of court, or for the enforcement of any demand of rent or revenue, to sell or cause to be sold any person, or the right to the compulsory labor or services of any person, on the ground that such person is in a state of slavery. Act V. 1843, sect. 1.

Police cannot take cognizance.

Public officers are not to sell persons or the right to their services.

(a) The preamble thus explains the reasons for this enactment:—"Whereas in consequence of the extension of the possessions held under the presidency of Fort William, subsequent to the enactment of Reg. X. 1811, prohibiting the importation of slaves from foreign countries, a doubt has arisen whether the provisions of that regulation can be held to apply to cases of slaves removed from any part of the British possessions acquired subsequently to the passing of that regulation into any part of those then held under the said presidency; with a view to the removal of any such doubt, and also with a view to the entire prohibition of the removal of slaves for purposes of traffic from one part of the British territories to another, the following rules are enacted, &c."

The right to slaves is not to be enforced by the courts.

4063. No rights arising out of an alleged property in the person and services of another as a slave are to be enforced by any civil or criminal court or magistrate within the territories of the East India Company.(a) Act V. 1843, sect. 2.

The right to property remains the same though the owner or the person from whom it is derived was a slave.

4064. No person who has acquired property by his own industry, or by the exercise of any art, calling, or profession, or by inheritance, assignment, gift, or bequest, is to be dispossessed of such property or prevented from taking possession thereof on the ground that such person or that the person from whom the property has been derived was a slave. Act V. 1843, sect. 3.

What is a penal offence if done to a free person, is equally so if done to a slave.

4065. Any act which would be a penal offence if done to a free man is equally an offence if done to any person on the pretext of his being in a condition of slavery. Act V. 1843, sect. 4.

Sale of a slave by one not the owner is punishable

4066. Under this section it was ruled, that an attempt to sell a slave by one not her owner, is a punishable offence. Reports *L. P.* 1852, part 2, page 281.

SECTION V.

OF EMIGRANTS AND CRIMPING.

Definition of crimping.

4067. Any person who by force or fraud, unlawfully detains in any place or decoys to any place any native of India, with intent to force or prevail upon him to enter into any service, or contract for service, to be performed out of the territories under the government of the East India Company, into which he was not minded to enter without such force or fraud, or who, by means of false imprisonment, intoxication, intimidation, force, or fraud, causes any native of India to enter into any such service or contract for service, or who attempts, by force, or fraud, or by any false promise, pretence, or representation, to cause any native of India to depart either by land or water from the territories under the government of the East India Company, is a crimp, and guilty of crimping, within the meaning of this Act. Act XXIV. 1852, sect. 1.

Meaning of term emigration.

4068. The departure of any person out of the territories under the government of the East India Company, by land or water, is emigration from the said territories within the meaning of Act XIV. 1839, and of this Act. Act XXIV. 1852, sect. 2.

No offence to contract for labor in a foreign settlement on the main land of India.

4069. After the passing of this Act no person shall be liable to the penalties of Act XIV. 1839, for making, in good faith, any contract with any native of India, for labor to be performed in any foreign settlement on the main-land of India, or for knowingly abetting or

(a) This provision supersedes Const. No. 887, which declares that a magistrate has no authority to interfere to deliver to the petitioner a child whom he alleges to be his absconded slave;—and so, also, Const. No. 939 which directs, that, on the complaint of a party alleged to be a slave that he is detained by violence, the enquiry should in the first instance be entered into in the criminal department, and, if violence be proved, redress should be afforded him, and the opposite party referred to a civil action to prove his claim.

aiding any native of India in emigrating from the said territories to any such foreign settlement. Provided that if any person shall make any contract with any native of India for service or labor to be performed by such native out of the territories under the government of the East India Company, or cause any native of India to depart from the territories under the government of the East India Company, or knowingly aid or abet such native of India in emigrating from the said territories to any such foreign settlement with intent that such native shall afterwards depart from India, such person shall be deemed to be a crimp and guilty of crimping within the meaning of this Act, and proof of the subsequent departure of such native from India, from any place out of the territories under the government of the East India Company within the period of six months from the time of the departure of such native from the said territories under the government of the East India Company, shall be *prima facie* evidence of such intent. Act XXIV. 1852, sect. 3.

But to contract for labor out of the Company's territories is crimping.

Departure of native from said territories *prima facie* evidence

4070. Every crimp within the meaning of this Act is liable to be imprisoned for a term not exceeding six calendar months, and to pay a fine not exceeding five hundred rupees. Act XXIV. 1852, sect. 4.

Penalty for crimping.

4071. Every person who shall, by means of intoxication, false imprisonment, or intimidation, or by means of any false promise, pretence, or representation, force or decoy any native of India out of the territories under the government of the East India Company, or fraudulently cause any such native to depart from the said territories, shall be liable to be imprisoned for a term not exceeding three years. Act XXIV. 1852, sect. 5.

Penalty in the case of treachery, fraud, or decoy.

4072. In every case in which under this Act imprisonment may be awarded for any offence it shall be lawful for the court, who may award such imprisonment, to sentence the offender to be kept to hard labor during the whole or such period or periods of such imprisonment as to such court shall seem meet. Act XXIV. 1852, sect. 6.

Labor may be awarded

4073. Every person who makes with any native of India any contract of labor to be performed in any British or foreign colony without the territories of the East India Company; or who knowingly abets or aids any native of India in emigrating from the said territories for the purpose of being employed as a laborer: is liable, on conviction before a magistrate or justice of the peace, to a fine not exceeding 200 rupees for every native so contracted with, aided, or abetted; and, in default of payment of such fine, to be imprisoned for a term not exceeding 3 months;—or to be imprisoned, or imprisoned and kept to hard labor for a term not exceeding 3 months for every native so contracted with, provided that such imprisonment shall not in any case exceed 6 months for any one offence. Act XIV. 1839, sect. 2. Act XXIV. 1852, sect. 7.

Penalty for contracting with a native to labor in a British or foreign colony, or aiding a native in emigrating for such purpose.

4074. In every case in which any person shall commit an offence under section 2, Act XIV. 1839, as explained and amended by this Act, after having been previously convicted, either before or after the passing of this Act, of an offence under that section, such person shall be liable, upon conviction before a criminal court of competent jurisdiction, to be imprisoned, or imprisoned and kept to hard labor for any period not exceeding one year;

Penalty for second offence

and in every indictment, information, or other proceeding for such an offence committed after such previous conviction, it shall be sufficient, after describing the offence, to state that the offender was at a certain time and place convicted of an offence under section 2, Act XIV. 1839, without otherwise describing such previous offence or conviction; and a certificate of the previous conviction, purporting to be signed by the officer having the custody of such previous conviction, or by the deputy or legally authorized assistant of such officer, shall, with proof of the identity of the person of the offender, be sufficient *prima facie* evidence of the first conviction, without proof of the signature or official character of the person appearing to have signed such certificate. Act XXIV. 1852, sect. 8.

Proof of previous conviction.

Meaning of term magistrate.

4075. The term "magistrate" in Act XIV. 1839 shall extend to joint magistrates and persons lawfully exercising the powers of a magistrate. Act XXIV. 1852, sect. 9.

The above is not applicable to native seamen or menial servants.

4076. Nothing in this Act contained is to be taken to apply to any native seaman, who of his own free-will contracts to navigate any vessel, or who embarks on board such vessel in pursuance of such contract; or to any person who contracts to serve as a menial servant only, or who embarks as such menial servant. Act XIV. 1839, sect. 3.

nor to persons emigrating from Calcutta, Madras, or Bombay, to Mauritius, St. Lucia, Grenada, British Guiana, or Trinidad.

4077. The above Act does not apply to the emigration of laborers being native inhabitants of the territories under the government of the East India Company from the ports of Calcutta, Madras, or Bombay, to the Mauritius, St. Lucia, Grenada, Jamaica, British Guiana, or Trinidad; but is in full force in all the other ports of India, and in regard to emigrants from India proceeding to other places than those above named. Act XV. 1842, sect. 1. Act XXXI. 1855, sect. 2. Act XXI. 1844, sect. 1.

Magistrates to look closely after the duffadars employed by the emigration agents, who carry a certain kind of purwana in order to give the appearance of authority to their proceedings.

4078. The duffadars employed by emigration agents are provided with a species of purwana by them, addressed in English to the judges, magistrates, and collectors of the zillahs, but in the native languages to the darogahs of police, zumcendars and others, for the purpose of securing them from interruption: as it is extremely probable that such purwanas are represented by these men to the ignorant people as official documents giving them some degree of authority in their proceedings, magistrates are required to be on the alert to detect and bring to punishment any duffadar or other person who, being in possession of a document of this nature, may practise fraud, extortion, or oppression of any kind upon the people. They should also discourage the use of these papers or purwanas, and keep so strict an eye upon the movements of those who bear them, that they may be made aware of their producing no real advantage, but on the contrary exposing them to suspicion and distrust. C. O. Sup. Pol. L. P. No. 25 of 1843.

CHAPTER V.

OF *FIAL-I-SHANIA* AND *ZINA*.

SECTION I.

OF RAPE.

4079. There is nothing in the regulations which prohibits a magistrate from taking cognizance of cases of rape in which no complaint is preferred; but he should exercise this power with the utmost discretion and with due regard to the feelings of the injured party and her family. Const. No. 670.

Case may be taken up, though no complaint is preferred.

4080. A charge of rape may be legally referred to police officers for investigation, or may be preferred directly at the thana. Const. Nos. 1174 and 1365.

Cognizable by police officer.

4081. A *razeenamah* is not admissible in a case of rape, as that offence is described in cl. 3, sect. 6, Reg. XVII. 1817 as a heinous crime: and if the woman, on whom the violence has been committed, and her husband refuse to prosecute, the government pleader should be appointed to conduct the prosecution. Const. No. 403. N. A. R. vol. 3, page 127.

Razeenamah inadmissible. If the parties refuse, the government pleader is to prosecute.

4082. Where the only prosecutor was the ravished girl, who was an infant and whose examination was taken without oath, the *nizamut adawlut* held that the trial was informal, and returned the proceedings with instructions that the *vakeel of government* should be directed to stand forward as prosecutor. N. A. R. vol. 3, page 170.

So, where the woman is a minor and therefore unable to prosecute.

4083. In trials before the sessions courts for rape, the *futwa* of the law officer of the sessions court, before whom the trial is held, is to declare only whether the prisoner is legally convicted, or if not whether there be strong ground of presumption, arising from his free confession, or from credible testimony, or from circumstantial evidence, that he is guilty of the crime charged against him. Reg. XVII. 1817, sect. 6, cl. 1.

Futwa to be given in trials for rape.

4084. The above provision, which requires the law officer to declare only whether the prisoner is legally convicted, and to refrain from stating to what punishment the *Mahomedan* law renders him liable, is not applicable to a case of rape attended with robbery. N. A. R. vol. 2, page 267.

The above does not apply to a case of rape attended with robbery.

4085. If the prisoner is convicted, or presumed guilty, of the heinous crime of rape, the session judge is not to pass any sentence; but is to refer the trial to the *nizamut adawlut*, for the sentence of that court, under the general regulations in force. Reg. XVII. 1817, sect. 6, cl. 3.

On conviction of rape, the trial is to be referred;

even, if the conviction is for the attempt merely.

4086. It was held unnecessary, under the above provision, to refer a trial for rape to the nizamat adawlut, unless the session judge and his law officer be of opinion that the offence was actually consummated; or unless the judge consider, in the case of an attempt, that the punishment which he is authorized to inflict by cl. 7, sect. 2, Reg. LIII. 1803, viz., imprisonment for 7 years and stripes, is insufficient. N. A. R. vol. 2, page 182. But it seems that this ruling no longer holds; for, in a late case, the court quashed the conviction of a prisoner for an attempt at rape, and directed the judge to refer the trial in the regular course, on the ground that attempts to commit offences follow the course prescribed for the offences themselves. Reports *L. P.* 1852, part 2, page 84.

It is not necessary to a conviction, that the act should be complete.

4087. Where the prisoner was seen in the act of committing a rape and seized in that situation, and the circuit judge referred the case under the idea that an attempt only had been established by the evidence, it was held that the completion of the offence was not necessary to a conviction. N. A. R. vol. 3, page 215.

The consent of a child is immaterial.

4088. It was held that the consent of a girl of the age of eight years was immaterial; and the prisoner was sentenced, on a charge of "illicit carnal knowledge of the prosecutor's daughter," (in consideration of his youth) to 15 stripes and imprisonment for 6 months. N. A. R. vol. 2, page 452. When the girl was about 11 years of age, it was held that her consent was sufficient to bar conviction of rape. Reports *W. P.* 1854, part 1, page 673. But in another case where the girl was the same age, it was held that the simple fact of sexual intercourse having taken place is sufficient to establish that of accompanying violence. Reports *W. P.* 1854, part 2, page 292. So, where the girl called herself 12 years of age, but the session judge considered from her appearance that she was not more than 8 or 9. Reports *W. P.* 1855, part 1, page 335.

Consent obtained by fraud does not absolve.

4089. When a man fraudulently induces the woman to admit his intercourse with her under the belief that he is her husband, the offence amounts to rape. Reports *W. P.* 1856, part 1, page 575.

On charge of rape conviction cannot be had of adultery.

4090. Where the prisoner is tried on a charge of rape, he cannot be convicted of adultery. N. A. R. vol. 5, page 140. This supersedes a former precedent in which the contrary doctrine was held; vol. 2, page 317.

The evidence of the party ravished not sufficient except on oath, or strongly corroborated.

4091. Where the only evidence against the prisoner was that of the girl alleged to have been ravished, and she was too young to be sworn, the court directed his release. N. A. R. vol. 2, page 415. So, where the woman violated was deaf and dumb, and it was not possible to administer an oath to her; the prisoner, though indicated by her as the person who ravished her, was acquitted for want of evidence. N. A. R. vol. 3, page 59. But where the evidence of the ravished girl, aged about nine years, and of another girl of the same age, was corroborated by that of the girl's mother and of others as to the state of her clothes and body, the proof was held sufficient for conviction. N. A. R. vol. 2, page 292. The declaration of the woman, though made almost immediately after the occurrence to her relations and afterwards taken down by the police officers, was held alone insufficient for conviction; N. A. R. vol. 2, page 411: and so, the evidence of the woman on oath corroborated by witnesses whose veracity was doubtful, was considered insufficient

See rules regarding the competency of witnesses in paras. 550 et seq.

to prove the violence, though it might substantiate a charge of adultery. *N. A. R.* vol. 4, page 35.

4092. Where there was no evidence to prove the identity of the prisoners, but the statements of four children examined without oath, the court returned the proceedings with directions, that such of them as evinced a sense of the obligation of deposing truly should be sworn to the truth of their depositions. *N. A. R.* vol. 3, page 194.

Evidence of others insufficient except on oath.

4093. When the prisoners were originally tried for highway robbery and acquitted; but, though no charge of rape was preferred against them by the prosecutrix on that occasion, four of them acknowledged themselves and implicated a fifth prisoner, as concerned either as principals or accessaries in a rape on her person; and they were all indicted on these confessions; as no other evidence appeared against them, they were acquitted. *N. A. R.* vol. 3, page 325.

Where the prisoners confessed, but there was no other evidence, they were acquitted.

4094. The usual sentence in cases of rape appears to have been imprisonment for 7 years with the addition in some cases of stripes; *N. A. R.* vol. 1, page 381; vol. 3, pages 72, and 127. So, where the girl was only nine or ten years of age; *N. A. R.* vol. 1, page 212; vol. 3, page 215; vol. 4, page 318: but in a later case where the girl was of that age the prisoner was sentenced to 14 years' imprisonment with labor and irons in banishment; *N. A. R.* vol. 6, page 266. Where the girl was only seven years of age, the prisoner was sentenced to 30 stripes and imprisonment in banishment for 10 years; *N. A. R.* vol. 2, page 267. Where death was the consequence of the rape on a girl of ten years of age, the prisoner was sentenced to imprisonment in banishment for 14 years; *N. A. R.* vol. 4, page 73. Where the prisoner was convicted of rape and sentenced to imprisonment for 5 years, two boys who held the woman were sentenced to imprisonment for 6 months and a fine of 20 rupees in lieu of labor; *N. A. R.* vol. 5, page 140. A boy, thirteen or fourteen years of age, convicted of rape, was sentenced in consideration of his youth to 3 years' imprisonment; *N. A. R.* vol. 3, page 147. Where the prisoner was charged with the rape of a child under 4 years of age, the court viewed it merely as an attempt, and sentenced him to imprisonment for 5 years and stripes; *N. A. R.* vol. 2, page 182: and so, where a boy only 10 years old was convicted by the futwa of rape on a girl only three years of age, the court sentenced him as for a misdemeanor to imprisonment for one year; *N. A. R.* vol. 3, page 87.

Precedents of convictions common cases;

in a case attended with homicide;

accessaries;

by a boy;

on a child under 4 years of age.

4095. According to Mahomedan law, the consent or refusal of the woman does not alter the nature of the offence in cases of criminal intercourse; and the same fixed penalty must be awarded whether the man has used violence, or has been engaged in an act of simple adultery. The term zina includes adultery, fornication, rape, and incest; and it is only necessary that the act should have been committed by a Mussulman married, sane, free, and of mature age, with a woman in whom the man has no right either by marriage or bondage: the punishment is barred by the existence of any doubt on the question of right, or by any conception in the mind of the accused that the woman was lawful to him, and by his alleging such idea as his excuse. From one definition of whoredom given by the two disciples, it would seem that the offence to be punishable must have been complet-

Mahomedan law of zina.

Definition.

Evidence requisite to proof.

Confession.

Punishment.

ed(a); but in the precedents above quoted the law officers appear to have abandoned this doctrine, or to have compromised it by awarding tazeer in such cases. The evidence of women is inadmissible to establish the charge; and the law is not satisfied with less than the positive testimony of four men, eye-witnesses to the fact, and of ascertained credit; nor is the apparent probity of such witnesses sufficient, but their integrity must be ascertained by the magistrate both by open and secret purgation. If less than four competent witnesses bear evidence, they are liable to the punishment of slander, unless the accused subsequently confess; and so, if one of the witnesses is afterwards found to have been incompetent, and if any witness retract his testimony, it is no longer valid. The confession requisite to establish the charge, in defect of evidence, must be made by a person of sound mind and mature age four times, at four different sittings of the kazeer; who is directed to turn the party away without receiving the confession until the fourth time, and is authorized to suggest a denial, or the mention of circumstances which may exculpate or absolve from the legal penalty. The person who has confessed may also at any time withdraw his confession; even during the infliction of the punishment; and if his sentence be founded upon it, he must be discharged. A confession, though repeated four times, made before any other person than the kazeer, is insufficient for conviction: nor can conviction be founded partly on confession, partly on evidence. The stated punishment in a case of zina, in which all the requisites above mentioned are fulfilled, is stoning to death; but where the prisoner, although free, sane, and adult, is not a Mahomedan, or is unmarried, he (or she) is liable to a sentence of one hundred stripes, and (in the case of the man) to temporary banishment or imprisonment at the discretion of the kazeer. There are various other minor circumstances noted, which may prevent the conviction or the punishment; but it is unnecessary here to give them in detail; the more especially, as, under the regulations, a conviction ensues without reference to and notwithstanding their existence.(b)

(a) Hed. Trans. vol. 2, page 27.

(b) Hed. Trans. book 7. Harington's Analysis, vol. 1, page 266.

NOTE.

In English law, an infant under the age of fourteen years is presumed by law unable to commit a rape; but he may be a principal in the second degree, as aiding and assisting, if it appear by the circumstances of the case that he had a mischievous intent. Nor is evidence admissible against him to show that in point of fact he has attained the full state of puberty, and was capable of committing the crime. A husband also cannot be guilty of a rape upon his wife; but he may be guilty as a principal in assisting another person to commit a rape upon her: and in such case the wife is a competent witness against her husband. It must be proved that the offence was committed against the will of the woman, which of course implies violence; but it is no excuse that she yielded at last, if her consent was forced from her by fear of death or duress; and so, it is rape if the connection took place when she was in a state of insensibility from liquor, having been made drunk by the prisoner, though the liquor was given only for the purpose of exciting her. Nor is it any excuse that she consented after the fact; or that she was a common strumpet, for she is still under the protection of the law, and may not be forced; or that she consented at first, if the offence was afterwards committed by force or against her will; or that she was a concubine to the ravisher, for a woman may forsake her unlawful course of life, and the law will not presume her incapable of amendment. All these circumstances, however, are material to be left to the jury in favor of the accused,

more especially in doubtful cases, and where the woman's testimony is not corroborated by other evidence. It seems doubtful whether the carnal knowledge of a woman, under circumstances which induce her to suppose it is her husband, amounts to a rape; and where the indictment has been for rape under such circumstances, the prisoners have been convicted of an assault under a special statute, which enacts, that on the trial of any person for any felony, where the crime charged includes an assault against the person, the prisoner may be acquitted of the felony and punished for the assault. To constitute the offence of rape there must be a penetration; and any, the slightest, penetration will be sufficient; even where the hymen has not been ruptured; "but where that which is so very near to the entrance has not been ruptured, it is very difficult to come to the conclusion that there has been penetration so as to sustain a charge of rape." But it is not necessary to prove emission; and where the circumstances are proved to have been such that no emission did or could take place, the offence is complete if the penetration is proved. The party ravished, says Lord Hale, may give evidence upon oath, and is in law a competent witness; but the credibility of her testimony, and how far she is to be believed, must be left to the jury, and it is more or less credible according to the circumstances of fact that concur in that testimony. For instance, if the witness be of good fame, if she presently discovered the offence, and made pursuit after the offender; showed circumstances and signs of the injury; if the place, in which the fact was done, was remote from people, inhabitants, or passengers; if the offender fled for it; these and the like are concurring evidences to give greater probability to her testimony, when proved by others as well as herself. On the other hand, if she be of evil fame, and stand unsupported by the testimony of others; if she concealed the injury for any considerable time, after she had an opportunity to complain; if the place, where the fact was alleged to have been committed were such that it was probable she might have been heard by others, and she made no outcry; such circumstances carry a strong, but not a conclusive, presumption that her testimony is false. The defendant may give evidence of the woman's notoriously bad character for want of chastity or common decency; or that she had before been connected with himself; but he cannot give evidence of any other particular facts to impeach her chastity: but if, on cross-examination, she deny having had intercourse with other men than the prisoner, those men may be called to contradict her. So, what she herself said so recently after the fact as to preclude the possibility of her being practised on, has been holden to be admissible in evidence as a part of the transaction; but the particulars of her complaint are not evidence of the truth of her statement. A strict caution is given by Lord Hale with regard to the evidence for the prosecution in cases of rape; "an accusation easily to be made, and hard to be proved, and harder to be defended by the party accused, though ever so innocent." The unlawful and carnal knowledge and abuse of a girl under the age of ten years is felony; and if the girl is above the age of ten and under the age of twelve years, the offence is a misdemeanor; and in these cases it is immaterial whether the act was done with or without the consent of the female. The child herself, however tender her age, if capable of distinguishing between right and wrong, may be examined in proof of the offence; but her declarations are inadmissible; though the fact of her having complained of the injury, recently after its having been received, is evidence in corroboration.—*Roscoe and Archbold*.

SECTION II.

OF ADULTERY, FORNICATION, AND INCEST.

4096. In cases of adultery, it is requisite for the conviction and punishment of a married woman, that she be prosecuted by her husband; and no other person is to be deemed competent to prosecute, or to prefer the charge against her, in such cases. The charge of adultery must be preferred by the husband of the adulteress;
 Reg. XVII. 1817, sect. 6, cl. 4.

as well against the adulterer, as against the wife.

4097. Although the wording of the above provision does not specifically restrict the magistrate in cases of adultery from proceeding against the adulterer, when the husband of the adulteress does not come forward to prosecute, yet by the spirit of the enactment the restriction is equally applicable to such cases. So, neither can the session judge direct the commitment of a woman on a charge of adultery, unless the husband prefers such charge. Const. No. 670. N. A. R. vol. 2, page 421; and vol. 3, page 298.

And the complaint of the husband must distinctly specify the charge of adultery.

4098. Where the husband in his original petition of complaint to the magistrate charged the prisoner with having enticed and taken away his wife with certain ornaments and clothes, and with illegally detaining his wife and property, and prayed for redress under Reg. VII. 1819; and afterwards, on questions by the magistrate, was induced to prefer the higher charge of adultery, and to include the wife in the accusation; and the magistrate then committed the prisoners for trial on the charge of adultery; it was held that the proceedings of the magistrate were irregular and exceptionable, and that the commitment was under the above provisions illegal. N. A. R. vol. 3, page 177.

But where the husband brought the charge before the magistrate in the course of a judicial investigation, charge by petition was held unnecessary.

4099. Where a prisoner, accused of the murder of his wife, pleaded in justification an improper intimacy between her and another man; and the magistrate swearing him to the truth of the charge proceeded against the alleged paramour for adultery; the nizamat adawlut held that the husband's charge so delivered was sufficient, and that a charge by petition was unnecessary; as the object of Reg. VII. 1811 is merely to restrict the police officers from taking cognizance of such offences, and that object is not in any way defeated by the course pursued in the present instance. Const. No. 1199.

Charge will not lie, if *nika* has been performed.

4100. On a charge of adultery it is a sufficient defence that the kazi performed the marriage ceremony, called *nika*, between the prisoners, after having satisfied himself that the woman had been divorced by her first husband. Reports *W. P.* 1855, part 2, page 878.

A charge of incest may be prosecuted on the part of government.

4101. As the crime of incest is of the nature of an offence against society and not of a private wrong, there is no reason why a person guilty of that offence should not be prosecuted on the part of government. The above provisions refer only to adultery, and leave all other kinds of zina, under which term incest is specifically included in the preamble of Reg. XVII. 1817, to be dealt with in the usual method. Const. No. 865.

Evidence of wife admissible against paramour.

4102. A wife's evidence may be taken against her paramour on a charge of adultery preferred against him by her husband. Reports *L. P.* 1855, part 1, page 232.

Futwa to be given in such cases.

4103. In trials before the sessions courts for adultery, or any other offence within the provisions of the Mahomedan law for cases of zina, and fial-i-shania, the futwa of the law officer, before whom the trial is held, is to declare only whether the prisoner is legally convicted, or if not whether there is strong ground of presumption, arising from his free confession, or from credible testimony, or from circumstantial evidence, that he is guilty of the crime charged against him. Reg. XVII. 1817, sect. 6, cl. 1.

4104. If the *futwa* so given declares the prisoner legally convicted, or that there is strong presumption of his guilt, and the session judge, before whom the trial is held, concurs in the conviction of the prisoner, or in the presumption of his guilt, so as to render him a proper object of punishment, and the circumstances of the case do not appear to call for a more severe punishment than what the sessions courts are authorized to adjudge under cl. 7, sect. 2, Reg. LIII. 1803*, the judge is to sentence the prisoner to suffer such punishment as is deemed adequate to his guilt and the nature of the offence, not exceeding corporal punishment and imprisonment with hard labor for the term of seven years. Reg. XVII. 1817, sect. 6, cl. 2.

Sentence to be passed by the sessions court.

* i. para 1314.

4105. A mere attempt to commit adultery is not punishable under these provisions. The prisoner effected an entry into the house of the prosecutrix at night, and proposed to commit adultery with her: held that the magistrate should have punished him for trespass. Reports *W. P.* 1854, part 1, page 651.

Attempt not punishable.

4106. By the Mahomedan criminal law, persons who harbour adulterers are punishable by *acoobut*.(a) N. A. R. vol. 2, page 42.

Harbouring adulterers is an offence.

4107. A prisoner convicted of adultery was sentenced to imprisonment for one year with labor. N. A. R. vol. 2, page 317. A brother and sister convicted of incest were sentenced, the former to 3 years', and the latter to 2 years' imprisonment with labor redeemable by fine. Reports *L. P.* 1852, part 1, page 51.

Precedents.

SECTION III.

O F S O D O M Y.(b)

4108. As the regulations prescribe no specific punishment for the offence of sodomy, and as the *futwa* of the law officers upon conviction is usually one of discretionary punishment by *tazeer*, it must be considered as falling under the rule laid down in cl. 7, sect. 2,

Such trials need not be referred; but fall within the discretionary sentence which the session judge is competent to pass.

(a) This is taken from the marginal note of the report; but it would seem from the body of the report that the law officers convicted the accused of "connivance and sheltering the adulterer and adulteress in their houses," which implies a more active assistance than merely harbouring. The judge of circuit, however, before whom the case was tried, doubted whether this was a conviction of a punishable offence, and made this question one of the points of reference; and as all the prisoners were acquitted by the *nizamut adawlut*, there is nothing to show in what manner the court viewed the dictum given above. For the Mahomedan law regarding adultery, &c., see para. 4095.

(b) In English law, the evidence required to prove this offence is the same as in rape, and penetration alone is sufficient; but it is not necessary to prove the offence to have been committed against the consent of the person upon whom it was perpetrated; and both agent and patient (if consenting) are equally guilty. If it be committed on a boy under fourteen years of age, it is felony in the agent only; and the same, it should seem, as to a girl under twelve.

Reg. LIIL. 1803. There is no necessity, therefore, for referring such trials to the nizamat adawlut, unless the session judge differs in opinion with his law officer as to the proof of the offence, or deems the punishment of stripes and imprisonment with hard labor for 7 years insufficient. Const. No. 353.

Fetters to be adjudged in all cases.

4109. Where a judge passed sentence of imprisonment with labor but without irons for an attempt to commit sodomy, the court held that a person convicted of that crime should never be exempted from fetters. Reports *L. P.* 1853, part 1, page 758.

Mahomedan law.

4110. According to the doctrines of Aboo Yoosuf and Imam Mahomed, the crime of sodomy is classed by the Mahomedan law with that of zina, and is punishable in the same manner; but this opinion is rejected by Aboo Huneefah, who holds that punishment can be awarded only by tazeer: and the two disciples agree, that if the conditions on which alone hudd can be awarded (for which see para. 4095) are not fulfilled, the offender if presumed guilty is liable to discretionary punishment. The above refers to sodomy committed with a man or woman; if committed with a beast, it is admitted by all that hudd is not incurred, and that the punishment is discretionary. The *Jama Sagheer* directs that the penalty inflicted in cases of sodomy should be severe, and that the offender should be confined until he declare his repentance. *N. A. R.* vol. 1, page 234; and Hedaya translation, vol. 2, page 26.

Precedents of trials.

4111. A prisoner convicted of forcibly committing sodomy on a boy aged 6 or 7 years was sentenced to 25 stripes and imprisonment for 10 years; *N. A. R.* vol. 2, page 238. Where violence was alleged by the boy, aged 10 years, and the prisoner confessed to committing the offence, but declared that it was done with the boy's consent, he was sentenced to 25 stripes, tusheer, and imprisonment for 7 years; *N. A. R.* vol. 1, page 234. Where two prisoners were convicted on their own confession of sodomy, and said that it was their occupation, and a third prisoner was convicted of having instigated and aided in the commission of the offence, they were each sentenced to 30 stripes, tusheer, and imprisonment for 8 years; *N. A. R.* vol. 2, page 49.

BOOK VI.

OF OFFENCES AGAINST PROPERTY.

CHAPTER I.

OF ROBBERY, THEFT, AND RECEIVING STOLEN PROPERTY.

SECTION I.

OF ROBBERY BY OPEN VIOLENCE.

4112. Any person or persons who, in the day or in the night, go forth with any offensive weapon, or in a gang with or without an offensive weapon, with the criminal intent of committing robbery ; and by force or intimidation rob, or attempt to rob, any person or persons on or near a highway ; or on a river, lake, or other water ; or in or near a city, town, or village ; or in any other place whatever ; or attack by open violence, and rob, or attempt to rob, any dwelling-house, or other house or building ; or any tent, boat, or other receptacle of persons or property in which there is any person or property at the time of such robbery, or of such attempt to rob ; are to be deemed guilty of the crime of robbery by open violence (denominated in the Mahomedan law *sarika-i-kubra*, and more commonly *shabkhuni*, or *dacoity*) ; and on due conviction thereof whether by free and voluntary confession, or by the testimony of credible witnesses, or by strong circumstantial evidence, are to be adjudged to suffer such of the penalties declared in the next section, as may be applicable to the case, viz. according as the robbery may be with or without homicide, wounding, maiming, or other personal injuries ; or with or without other circumstances of aggravation. Reg. LIII. 1803, sect. 3, cl. 1.

Definitions.
Of robbery by open violence.

4113. Instead of the expression “ person going forth with any offensive weapon,” the term “ armed persons” is used in Reg. III. 1825 ; and it was declared by Const. No. 399 that clubs and sharpened bamboos should be considered as arms within the meaning of the regulation : that regulation was subsequently repealed by Reg. XVI. 1825, which notes more particularly “ any species of fire-arms, or spears, swords, clubs, or other weapons ;”

Meaning of the term offensive weapon.

but the clause from which this is quoted has also been repealed by Reg. I. 1831: and it may therefore be held that clubs and sharpened bamboos fall within the meaning of the term "offensive weapon" used in the above definition.

More than two persons are required to constitute a gang;

4114. In a case of highway robbery by two persons unarmed (the presence of a third person, though stated in the confession of one of the prisoners, not being proved by the evidence on record) it was held that more than two persons are required to constitute a gang, so as to bring the case within the above definition. N. A. R. vol. 2, page 172.

and in such case it is not necessary that they should be armed;

4115. Under the above definition a number of persons going out and committing robbery, is sufficient to constitute the offence of gang robbery or dacoity, although they were neither armed, nor guilty of any act of aggravation. Const. No. 750.

but if unarmed, there must be more than one.

4116. But in no case can a robbery committed by a single unarmed individual, fall within the definition of robbery by open violence. N. A. R. vol. 2, pages 23 and 53.

Snatching from the person does not constitute the offence.

4117. Snatching or forcibly taking property from the person without any previous intimidation, personal injury, or violence, when the robber is unarmed, does not constitute the offence of highway robbery, or robbery by open violence. Const. No. 228. N. A. R. vol. 1, page 269; and vol. 2, page 153. Nor is it theft (under the Mahomedan law) if openly done. It may be a minor form of highway robbery, if committed on the highway, or it may be one of the miscellaneous offences punishable by tazeer under that law. Reports *L. P.* 1853, part 2, page 143.

Example of case in which theft became robbery by open violence.

4118. Three persons broke open a granary, and were engaged in carrying out grain and other property, when they were discovered by certain police officers going their rounds: the robbers immediately took to flight, leaving their booty behind; but being closely pursued and overtaken, turned about, and attacked their pursuers. This was held to be dacoity. N. A. R. vol. 1, page 238.

And where violence was subsequent to the first entry.

4119. Where a gang of more than three armed men entered a house without using violence, but subsequently broke open the door of one of the inner houses and carried off a bell-metal pot, and afterwards severely beat the inmates in the attempt to rescue one of their number, they were convicted of dacoity; and it was held that, wherever the violence is simultaneous with the entry in such cases, the crime falls within the above definition. N. A. R. vol. 3, page 271.

4120. Where a gang of twenty men armed with clubs secretly effected an entry into a house, and afterwards maltreated the inmates, it was held sufficient to constitute the crime of robbery by open violence as defined above. N. A. R. vol. 2, page 217.

Police.

Magistrates are to report immediately to the superintendent of police in English the occurrence of any aggravated case of dacoity; and afterwards to make a weekly report of their proceedings.

4121. Magistrates are not only to communicate freely with the superintendent of police, either privately or publicly, on the subject of gang-robbery; but they are also required, immediately on the receipt of intelligence that a dacoity has occurred attended with murder, torture, wounding, or other aggravating circumstances, to submit for his information and orders a report in the English language containing a brief abstract of the circumstances of the case, and of their own proceedings: and in all such cases they are to continue to send weekly reports of their progress in arresting the offenders and eliciting

information, until the culprits are apprehended, or all immediate hopes of bringing them to justice have passed away. The superintendent of police must be kept fully acquainted with the occurrence of all heinous crimes and offences, particularly dacoities, highway robberies, and affrays, in order to make his office of any utility or assistance towards the suppression of crime; and any want of co-operation with him on the part of a magistrate will be brought to the notice of government.(a) C. O. Sup. Pol. L. P. No. 2 of 1839.

4122. The court of directors observe that—"with regard to the sirdar dacoits and the receivers of plundered property who systematically follow dacoity as a profession, measures might be taken under the direction of the superintendent of police for keeping a register of the chief persons of either description, as has been done with such success in the thuggee department. Such a register might gradually be formed by preserving and connecting together the information procured with respect to each remarkable dacoity. Information for the same purpose might often be procurable from prisoners either before their trial or while undergoing their sentence. Care should be taken that persons about to be brought to trial for dacoity, or under sentence of imprisonment for that crime, should not have such means of communication with other parties, as may be used in the one case for the corruption or intimidation of witnesses, or in the other case for effecting their escape." The superintendent of police calls the attention of magistrates to the subject, and remarks, that the great danger to be guarded against is the propensity of the prisoners to implicate innocent persons, and to give such information as they think is required though unsupported by facts. C. O. Sup. Pol. L. P. No. 13 of 1846.

Formation of a register of sirdar dacoits and systematic receivers of plundered property.

4123. Gangs of dosads come down the river in boats of about 300 maunds, ostensibly as purchasers of gram, under which they conceal their plunder and implements of dacoity. They have spies in the villages along the banks of the river; and after the perpetration of any dacoity, which is usually in a village not more than 3 miles distant from the river, they quietly drop some distance down the stream, and bring to at or near another village under pretence of procuring gram. Letter of Sup. Pol. L. P. February 15, 1848.

Caution in regard to dosads.

4124. The criminal authorities are to be on their guard against the abuse and oppression, to which the systematic and exclusive employment of approvers* for the conviction of persons accused of dacoity is necessarily liable: the testimony of men, by their own acknowledgment stained with the same crimes which they lay to the charge of others, stands always

Trial.

The evidence of approvers must be received with caution.

* For rule regarding the quali-

(a) In C. O. No. 8 of 1839 the superintendent of police circulated the following extract from a letter addressed by order of the government of India to the Bengal government, dated May 13, 1839:—"On the character of the reports [the six-monthly reports of the magistrates] the president in Council observes that they appear to be wanting in circumstantiality with respect to the particular crime of dacoity. A variety of offences are often included under this generic name; and therefore it is desirable to have a more detailed account of such instances as occur, than is necessary in the case of other crimes. It is well observed by the commissioner of Moorsshedabad, that the fact of the perpetrators being inhabitants of the district in which the offence occurs, or persons coming from a distance, affects to a considerable extent the complexion of the case. The worst of all descriptions of dacoity is that, which is perpetrated by gangs settled in a district and bidding defiance to the police: the next in the scale of enormity is, when such robberies are perpetrated by gangs coming from remote or foreign countries: the last and least aggravated form that this crime assumes is, when it is committed by parties casually united under the influence of some sudden temptation or the pressure of accidental calamity."

fixed pardon offered to dacoit-approvers, see para. 435.

in need of some corroborative evidence; and if it be received with favor or without distrust, may from vindictive or selfish motives, or even from mere wantonness, be turned equally against the innocent and the guilty. C. O. No. 195 of vol. 3.

When the evidence of approvers is relied on, it should be shown that there was no collusion.

4125. The concurring evidence of approvers, taken under circumstances which preclude mutual consent or any external suggestion by which their statements could be influenced, may be very deserving of belief, where those statements are confirmed as to all particulars by a reference to facts by which it is possible to test them. But then it ought to be very carefully ascertained that the evidence, relied on in any particular case, has been really obtained under the safeguard of those necessary conditions. It is proper to summon on the trial competent witnesses for the purpose of affording formal and satisfactory proof, that the statements of the approvers were, from the first, taken under circumstances which would render collusion impracticable. N. A. R. vol. 6, page 292.

Punishment does not depend on the amount, value, or description of the property plundered; and is not barred by the peculiar distinctions of Mahomedan law.

4126. In such cases of robbery by open violence, the punishment of the offenders is not to depend upon the amount, value, or description of the property plundered. Nor are any of the circumstances noted in the preamble to this regulation, (a) as barring a sentence of hudd under the Mahomedan law in cases of highway robbery, nor any other provision in that law, to be hereafter allowed to operate against the punishment of persons convicted of highway robbery, or of any robbery by open violence, as defined in the preceding clause of this section; or of murder, or other acts of criminality committed in the prosecution of

(a) The following is that part of the preamble referred to:—"It is further requisite to define the crime and punishment of robbery by open violence, under the continued prevalence of this atrocious crime; which is frequently attended with murder, or with maiming or other personal injury; as well as with the crime of arson or wilful burning of houses, and other aggravating circumstances; and for the punishment of which the specific provisions of the Mahomedan law, under the distinctions admitted to except offenders from the stated penalties, as well as from a distinction in the received construction of that law between highway robbery at a distance from any inhabited place, and robberies not committed on or near the highways, or committed in or near any place inhabited, have been found altogether inadequate. In the case of murder committed by one or more robbers on the highway (*kutta-ut-tarik*) at a distance from any inhabited place, the whole of the principals and accomplices are subject by the Mahomedan law (under its specific provision of hudd, or stated punishment by the right of God; being, in other words, exemplary punishment inflicted for the prevention of crimes, which is the end of public justice) to a sentence of death. The same punishment in this instance is inflicted on the whole band, in consideration of each of them being aiding and abetting to the others; and this principle, as allowed by some of the Mahomedan lawyers, is obviously applicable to all murders and other crimes committed by open violence, and by a number of persons assisting and supporting each other; whether on the highway, remote from, or near to, an inhabited place; or within a place inhabited, or in any other place whatever. But, according to the prevailing doctrines, this provision of the Mahomedan law, as well as the provisions it contains for the punishment of highway robbery without murder, by amputation of two limbs, cannot be applied to murders, or robberies committed in any other place than on or near the highway at a distance from any place inhabited; and even with respect to these it is held, that the specific punishment is barred by any one of the band of robbers being under age, or a lunatic, or a relation within the prohibited degrees of the person robbed or murdered; or by the person robbed or murdered not being a fixed resident under the permanent protection of the Mussulman government; or, with respect to robberies, by one of the robbers having a joint interest in the property plundered, or such property not being considered in legal custody with respect to any one of the robbers; or lastly, with regard to the separate punishment of each robber, if his share of the property taken shall not amount in value to ten dirms, being, according to the received calculation of the dirm, somewhat less than three sicca rupees. These distinctions are evidently repugnant to the principles of public and equal justice; and it is highly requisite that provision be made for the more certain and adequate punishment of the heinous crimes of murder and robbery; as well as of robbery, with or without any other acts of aggravated criminality, whosoever the same may be committed."

such robbery; or of an intent to rob; provided, as in all other cases of criminal conviction and punishment, that the party convicted be adult, and of sound understanding, so as to render him a proper object of punishment. Reg. LIII. 1803, sect. 3, cl. 2.

4127. Whosoever is proved to have belonged, either before or after the passing of this Act, to any gang of dacoits, either within or without the territories of the East India Company, is to be punished with transportation for life, or with imprisonment for any less term, with hard labor. Act XXIV. 1843, sect 1.

Persons belonging to gang of dacoits, how punishable.

4128. The meaning of the term gang of dacoits is not to be restricted to associated hereditary fraternities, or to particular tribes or families, as might appear from the preamble. There is nothing restrictive or obscure in the language of section 1. A gang of dacoits is simply any party of persons associated for the purpose of committing a dacoity, and to have belonged to a gang of dacoits is said of any one who has at any time, even once, associated himself with such party. Reports *L. P.* vol. 2, part 2, page 613.

This provision applies to all dacoits.

4129. Whenever there may be reason to believe that a prisoner, charged with the crime of dacoity belongs, or has belonged, to a gang of dacoits, such as is referred to in Act XXIV. 1843, a count to that effect is to be entered in the indictment in addition to the specific charge of dacoity. C. O. No. 38 of vol. 4.

Such charge to be always entered in calendar.

4130. But it is not sufficient to adduce evidence to prove that the prisoner was concerned in a specific dacoity, in order to substantiate a charge of having belonged to a gang of dacoits. The charge must contain a specific act of dacoity, on which his guilt and his connection with a particular gang will be proved. Reports *L. P.* 1856, part 1, page 692.

But specific act of dacoity must be laid and proved.

4131. Any person accused of the offence of dacoity with or without murder, or of having belonged to a gang of dacoits, or of the offence of unlawfully and knowingly receiving or buying property stolen or plundered by dacoity, may be committed by any magistrate within the territories of the East India Company, and may be tried by any court which would have been competent to try him if his offence had been committed within the zillah where that court sits. Act XXIV. 1843, sect. 2.

Persons accused of dacoity, or of belonging to a gang, or receiving plundered property, may be committed by any magistrate, and tried by any court;

4132. The above provision does not empower the courts to try prisoners for specific acts of dacoity committed beyond the Company's territories, without having first obtained the authority of government. Const. No. 1213.

but not for specific dacoity beyond the British territory.

4133. No court is, on trial of the offences specified in this Act [*i. e.* in section 2, *supra*] to require any futwa from any law officer. Act XXIV. 1843, sect. 3.—This refers to all cases of dacoity. C. O. No. 171 of vol. 3 *L. P.* Even when the dacoity has been attended with murder. Reports *L. P.* 1854, part 1, page 541.

Futwa not required in trials for dacoity;

4134. But on the trial of a prisoner charged with going forth for the purpose of committing dacoity, the futwa of a law officer, or in lieu of it the verdict of a jury or assessors, cannot be dispensed with under sect. 3, Act XXIV. 1843, as the offence is not one of those described in sect. 2 of that Act. For, although parties proved guilty of assembling and going forth to commit dacoity must necessarily be considered as belonging to a

but in trials for going forth with a gang to commit robbery, the futwa of the law officer, or the verdict of a jury or assessors, cannot be dispensed with.

gang of dacoits, yet such an act would be regarded as inferential evidence in support of a charge of having belonged to a gang of dacoits, rather than as constituting *per se* the latter offence; and, adhering to the rule of literal interpretation applicable to penal law, those cases only are considered amenable to the provisions of the Act in question, in which one or other of the charges is made out in terms corresponding with the terms used therein. N. A. R. vol. 6, page 52. Reports *L. P.* 1855, part 1, page 469.

Penalties.

Principals and accessories in robbery attended with murder to be sentenced to death.

4135. All persons convicted of being the heads or leaders of a gang of robbers, by whom a murder has been committed, or of having been actively concerned in the perpetration of such murder, or of any murder committed in the prosecution of robbery, or an intent to rob; or of having been present aiding and abetting, when such murder was committed; or, though not present, of having procured and caused by hire, counsel, or command, the perpetration of such murder in pursuance of a preconcerted plan to commit the same, or to commit robbery, are to be adjudged to suffer death. Reg. LIII. 1803, sect. 4, cl. 1.

This does not apply to the case of one of the robbers being killed.

4136. The circumstance of one of the robbers being killed in the prosecution of the dacoity, is not considered any ground for an aggravation of punishment: the blood of the robber, in such cases, is deemed by the Mahomedan law unprotected; and the shedding it in consequence not to incur any legal penalty. N. A. R. vol. 1, page 20, note.

Principals and accessories in robbery attended with personal injury not occasioning death, or with arson, or other aggravating act, are to be sentenced to transportation for life.

4137. All persons convicted of being the heads or leaders of a gang of robbers, by whom any person has been wounded, maimed, burnt, or subjected to other personal injury, torture, or cruelty, not occasioning homicide; or by whom a dwelling house or houses have been set on fire, or any other criminal and aggravating act committed in the prosecution of a robbery, or intent to rob (as well as persons convicted of having been actively concerned in any of the acts aforesaid, done in prosecution of a robbery, or intent to rob); or of having been present aiding and abetting when any such acts were committed; or, though not present, of having procured and caused by hire, counsel, or command, the perpetration of any such acts in pursuance of a preconcerted plan to commit the same, or to commit robbery, are to be adjudged to suffer imprisonment and transportation for life. Moreover any leaders of gangs, or other heinous offenders, convicted of a repetition of the crime described in this clause; or, without such repetition, of a degree of cruelty, violence, or other aggravating criminality, which, under the discretion allowed by the Mahomedan law in cases of seasut, may be punishable with death, and which appears to the nizamat adawlut to render such heinous offenders deserving of capital punishment; are liable to a sentence of death. Reg. LIII. 1803, sect. 4, cl. 2.

In the case of leaders of gangs, or heinous offenders repeating the crime, or in very aggravated cases, the nizamat adawlut may pass sentence of death.

Corporal punishment may be adjudged in addition to imprisonment: and therefore additional imprisonment in lieu thereof.

4138. In all cases of conviction of the crime of robbery by open violence, as defined in cl. 1, sect. 3, Reg. LIII. 1803, whether such conviction be founded upon the free and voluntary confession of the prisoner, or upon the testimony of credible witnesses, or upon strong circumstantial evidence, and the party so convicted is not sentenced to suffer death, the sessions court before whom the prisoner is convicted, and the nizamat adawlut in trials referred to that court, are competent to adjudge corporal punishment in addition to the penalties of imprisonment and transportation for life, or of imprisonment and hard labor for

the period of 14 years, whenever in consideration of the nature of the case, it appears proper to inflict such additional exemplary punishment.(a) Reg. III. 1805, sect. 2.

4139. In all cases in which a person appears to the session judge to be duly convicted (whether by his free and voluntary confession, or by the testimony of credible witnesses, or by strong circumstantial evidence) of being concerned, as a principal or an accomplice, in the crime of robbery by open violence, as defined in sect. 3, Reg. LIII. 1803, or of an attempt to commit the same;—if the robbery has been accompanied with murder, or with an attempt to commit murder; or has been accompanied with wounding, or other corporal injury to any person or persons in such a degree as to endanger life; or has been attended with any other aggravating act of criminality;—if the prisoner is not under the regulations in force liable to a sentence of death, the session judge is to pass sentence of imprisonment and transportation for life. But all such trials are to be referred to the nizamat adawlut in the manner prescribed by the existing regulations; and such sentence is not to be deemed final, nor is any warrant to be issued for carrying the same into execution, until it is confirmed by the nizamat adawlut: and if the session judge is of opinion that there are grounds for a mitigation or remission of punishment, he is to state the same in his letter of reference. The nizamat adawlut is to confirm such sentence of imprisonment and transportation for life; unless, from any extenuating circumstances appearing on the trial, the stated punishment appears too severe, in which case that court is authorized to grant such remission or mitigation of punishment as appears just and proper.*(b) Reg. VIII. 1808, sects. 3 and 4. Reg. XVII. 1817, sect. 8, cl. 3. Reg. XVI. 1825, sect. 2.

In cases attended with murder, or attempt to commit murder, or corporal injury endangering life, or other aggravation, if the prisoner is not liable to a sentence of death, the judge is to pass sentence of transportation for life, and to refer the trial to the nizamat adawlut, who are to pass the final sentence.

* v. para. 1457.

(a) The abolition of corporal punishment by Reg. II. 1834, of course renders this provision nugatory in cases in which a sentence of imprisonment for life is passed; but where the sentence is of imprisonment for 14 years, the courts may adjudge additional imprisonment for 2 years in lieu of stripes. See para. 1329.

(b) As this paragraph is composed of provisions taken from several successive regulations, which have modified those preceding them, and as the language has been somewhat inverted, it seems proper to subjoin those provisions separately as in the original: viz.,

“All persons convicted of being concerned, as principals or accomplices, subsequently to the promulgation of this regulation, in the crime of robbery by open violence, as defined in sect. 3, Reg. LIII. 1803, and who may not under the regulations in force be liable to a sentence of death, shall be adjudged by the courts of circuit and by the court of nizamat adawlut to receive 39 lashes with a corah, and to be imprisoned and transported for life; unless, from any extenuating circumstances appearing on the trial, the stated punishment shall appear too severe; in which case the court of nizamat adawlut is authorized to mitigate the sentence, as in other cases left to the discretion of that court by cl. 5, sect. 4, Reg. LIII. 1803, or to act in pursuance of cl. 6 of that section, if the prisoner appear a proper object of mercy and pardon.” Reg. VIII. 1808, sect. 3. “The courts of circuit shall refer to the court of nizamat adawlut, in the manner prescribed by the existing regulations, the trials of all prisoners convicted of the crime of robbery by open violence, and liable to the punishment declared in the preceding section. The judge of circuit, before whom the trial may be held, shall, in all cases, pass sentence for the stated punishment, if the prisoner appear to him, and to the law officer of the court of circuit, to be duly convicted, whether by his free and voluntary confession, or by the testimony of credible witnesses, or by strong circumstantial evidence. But such sentence shall not be deemed final, nor shall any warrant be issued for carrying the same into execution, until it be confirmed by the court of nizamat adawlut. And if the judge of circuit be of opinion, that there are grounds for a mitigation or remission of punishment, he shall state the same in his letter to accompany the trial, as required by cl. 3, sect. 6, Reg. LIII. 1803.” Reg. VIII. 1808, sect. 4.—“Persons convicted of robbery by open violence, as defined in cl. 1, sect. 3, Reg. LIII. 1803, when accompanied with wounding or other corporal injury not occasioning homicide, and likewise when not so accompanied, under the provisions for such cases in Regs. LIII. 1803; III. 1805, and

The nizamut adawlut in such cases, and the session judge if the case is not referrible, may mitigate the prescribed sentence.

4140. Provided with respect to all the crimes, and degrees of punishment, specified in this section, that if, from any extenuating circumstances, which appear on the trial before the sessions court, or nizamut adawlut, the stated punishment in any particular instance appears too severe; or if, on consideration of the number of prisoners convicted of the same crime, and of any discriminative circumstances with respect to one or more of them, the example appears sufficient for the ends of justice, without extending the full degree of the proscribed punishment to the whole of the prisoners convicted, it is competent to the nizamut adawlut, or to the session judge if the trial is not referrible under the regulations to the nizamut adawlut, to mitigate the sentence in such cases as is deemed just and expedient. Reg. LIII. 1803, sect. 4, cl. 5.

Punishment to be adjudged by the session judge in unaggravated cases.

4141. In cases of conviction before a sessions court of the crime of robbery by open violence, as defined in sect. 3, Reg. LIII. 1803, or of an attempt to commit the same, if the robbery has not been accompanied with murder, or with an attempt to commit murder, whether by wounding, burning, strangling, poisoning, drowning, throwing into a well or by any other means, nor has been accompanied with wounding, burning, or other corporal injury to any person or persons in such a degree as to endanger life, nor has been attended with any other aggravating act of criminality, such as appears to the session judge, before whom the trial is held, to merit and call for a more severe punishment than stripes and imprisonment with hard labor for 14 years in banishment from the district where the prisoner has resided, the session judge is authorized and directed, without reference to the nizamut adawlut (as required by cl. 6, sect. 8, Reg. XVII. 1817), to pass such sentence as he deems adequate to the offence on due consideration of all the circumstances of the case, not exceeding the stripes [now commutable to 2 years' additional imprisonment] and term of imprisonment, with hard labor in banishment, above specified. (a) Reg. XVI. 1825, sect. 3, cl. 1.

Going forth with a gang to commit robbery; sentence imprisonment for 7 years;

* The rule in para. 4140 for mitigating the punishment applies to these cases.

4142. Persons convicted of going forth with a gang of robbers for the purpose of committing robbery, but apprehended before they have committed such, or have made any violent attempt for the purpose, so as to bring them within the above provisions, are to be adjudged to suffer imprisonment and hard labor* for such period, not exceeding 7 years, as the circumstances of the case appear to merit. Reg. LIII. 1803, sect 4, cl. 4.

VIII. 1808, are liable, by sentence of the nizamut adawlut, to receive 39 lashes with a corah, and to be imprisoned and transported for life." "Nothing in the above clause shall be construed to empower the courts of circuit to pass and order execution of a final sentence of conviction and punishment without reference to the nizamut adawlut, in any case of robbery by open violence, as defined in cl. 1, sect. 3, Reg. LIII. 1803." Reg. XVII. 1817, sect. 8, cls. 3 and 6. "So much of sect. 8, Reg. XVII. 1817, and of the preceding regulations therein referred to, or of any other regulation in force, as requires that the courts of circuit shall in all cases of conviction of the crime of robbery by open violence as defined in cl. 1, sect. 3, Reg. LIII. 1803, refer the trial of the prisoner or prisoners so convicted for the final sentence of the court of nizamut adawlut, is hereby modified, as stated in the following section" (for which see the text, para. 4141). Reg. XVI. 1825, sect. 2.

(a) It was at the same time provided that in all cases in which the robbery was committed by a gang of three or more armed robbers, whether armed with any species of fire-arms, or with spears, swords, clubs, or other weapons, the court of circuit should not be competent to pass sentence on conviction for a less punishment than 14 years' imprisonment in banishment, without referring the trial to the nizamut adawlut. But this has been wholly rescinded by Reg. I. 1831.

4143. Persons convicted of the crime provided for by the above provision, are further declared liable to corporal punishment [now commutable to 2 years' additional imprisonment] in addition to the whole of the imprisonment provided for thereby, whenever it appears expedient, for the sake of example, to the sessions court before whom they are convicted, or to the nizamat adawlut in any cases referred to that court. Reg. III. 1805, sect. 3. and two years in lieu of stripes;

4144. Persons convicted of going forth with a gang of robbers for the purpose of committing robbery, but apprehended before they have committed such robbery, or made any violent attempt for the purpose, and adjudged to suffer temporary imprisonment under the above provisions, are previously to their release from confinement to be required to give substantial security for their future good conduct. In such cases, as well as in all instances wherein persons required to give security under cl. 6, sect. 2, Reg. LIII. 1803,* or any other provision in the regulations, are notorious robbers (dacoits) whom it would be dangerous to set at liberty without substantial security for their future good conduct, the prisoner is not to be released until such security be given, to the satisfaction of the sessions court upon the report of the magistrate, unless from the prisoner's behaviour during his confinement, or other circumstances, there appear to be sufficient ground of assurance to warrant his discharge on a muchalka, under the provision made for that purpose by sect. 11, Reg. LIII. 1803.† Reg. VIII. 1808, sect. 9. and to give security for future good conduct.

Rule for release of dacoits required to give security.

* v. paras. 1313 and 8571 et seq.

† v. paras. 3598 et seq.

4145. When the prisoners attacked the house of the prosecutor and broke into it; but, before they could fully effect their purpose, the inmates were aroused, and attacking the robbers drove them off, wounds having been inflicted on both sides; and the session judge convicted them of going forth with a gang of robbers for the purpose of committing robbery, the court held that they ought to have been charged with and convicted of dacoity attended with wounding. Reports *L. P.* 1852, part 2, page 137. Attempt to commit is not to be charged as a going forth to commit.

4146. If any paik, chokeedar, pasban, dosad, nigaban, or other village watchman, or guard, of whatever denomination, entertained or employed by a landholder, or by any other person, for the protection of villages, houses, persons, or property, and consequently required by the regulations to assist the police officers in preventing robbery and other crimes, and in apprehending offenders; or if any police officers of whatever description (whether a police darogah, or tulseeldar entrusted with the charge of the police, a city or town kotwal, or a jemadar, mohurir, burkundaz, peada, or other person employed under the magistrates, the police darogahs, and tulseeldars, or under any other officers of police, for the protection of the inhabitants of the country and their property from robbery; or for apprehending robbers and other criminals; or generally for the performance of any duty of police, connected with the prevention of public offences);—is convicted of the crime of robbery by open violence as defined in cl. 1, sect. 3, Reg. LIII. 1803; whether such conviction be founded upon the free and voluntary confession of the prisoner, or upon the testimony of credible witnesses, or upon strong circumstantial evidence; and the party so convicted is not liable to suffer death under cl. 1, sect. 4, Reg. LIII. 1803, as an accomplice in murder as well as robbery; he is to be held and expressly deemed to be If a village watchman or guard, or a police officer, of whatever description, is convicted of robbery with open violence, whether as principal or accomplice, the sentence which would have been passed on any other person may be enhanced in his case to death or transportation for life according to the circumstances of the case.

within the provisions contained in cls. 2 and 3 of that section, (a) whereby the nizamut adawlut are authorized to pass sentence of death in cases of aggravated criminality which appear to deserve it, although the robbery has not been attended with actual homicide; or, where the robbery has been without any personal injury or other act of aggravation, to extend the sentence of that court from imprisonment and hard labor for fourteen years to imprisonment and transportation for life, if on consideration of any circumstance appearing upon the trial to aggravate the guilt of any particular prisoner, the infliction of such more severe punishment appears just and necessary. Under this declaration any watchman, guard, or police officer, as described in the present section, who is convicted of having been present, aiding and abetting, at a robbery by open violence, or at an attempt to commit such robbery; or though not present of having procured and caused by hire, counsel, or command, the perpetration of such robbery, or attempt to rob; is liable to suffer death, on the sentence of the nizamut adawlut, according to the regulations, if in the prosecution of such robbery, or attempt to rob, any person has been murdered, wounded, maimed, burnt, or subjected to other personal injury, torture, or cruelty, or any dwelling house has been set on fire, or other criminal and aggravating act committed; or is liable to a sentence of imprisonment and transportation for life by the nizamut adawlut, if the prosecution of such robbery or attempt to rob has not been attended with homicide, personal injury, or any of the other aggravating acts above specified. It is further declared that any clear and direct connivance on the part of a watchman, guard, or police officer, as described in this section, whereby a gang of robbers have been enabled to commit any of the crimes above stated, is, if duly established, to subject the offender to the same penalty, as he would have been liable to if actually present, aiding and abetting; or, though not present, if he had procured and caused the perpetration of the offence by hire, counsel, or command. Reg. III. 1805, sect. 4.

Connivance on the part of such officer, subjects him to the same penalty as an accomplice.

But such trial need not be referred, if the judge considers a less severe sentence sufficient.

4147. But the above provision is modified by sect. 2, Reg. XVI. 1825; and the trial of a chokeedar convicted of dacoity is not necessarily referrible to the nizamut adawlut. The session judge should himself pass sentence, unless he considers the prisoner deserving of a more severe punishment than stripes and 14 years' imprisonment in banishment. N. A. R. vol. 5, page 68.

Punishment of such officer going forth with a gang to commit robbery.

4148. If any watchman, guard, or police officer as described in the preceding section, is convicted of going forth with a gang of robbers for the purpose of committing robbery, or of conniving at the going forth of a gang of robbers for such purpose, but he, or they, are apprehended before they have committed robbery, or made any violent attempt for the purpose; the watchman, guard, or police officer, so convicted, is liable to corporal punishment [now commutable to two years' additional imprisonment] and imprisonment with hard labor for such period, not exceeding 14 years, as the circumstances of the case, in the judgment of the session judge before whom he is convicted, appear to merit; or if the session judge in any particular case deems the prisoner deserving of more exemplary

(a) Cl. 3 was rescinded by sect. 2, Reg. VIII. 1808; and the provisions of para. 4139 have been enacted in its stead.

punishment, he is to refer the trial to the nizamut adawlut, who are authorized, if sufficient ground appear, to extend the sentence to imprisonment with transportation for life. Reg. III. 1805, sect. 5.

4149. The sessions courts are to report to the nizamut adawlut, and that court, if it appears necessary, are to report to government, the case of any prisoner or prisoners, who appear proper objects of mercy and pardon; or, if the punishment to which they are sentenced has not been adjudged under any provision of the Mahomedan law, or the regulations, expressly requiring the same, the nizamut adawlut, as already authorized, may remit the punishment, and order the discharge of the prisoner, without reporting the case for the orders of government. [See also the power of mitigation and pardon vested in the nizamut adawlut, paras. 1457 *et seq.*] Reg. LIII. 1803, sect. 4, cl. 6.

Pardon, or mitigation of sentence.

4150. On conviction of dacoity attended with murder, the prisoners have generally been sentenced to death, whether those by whom the murder was actually committed, or those present aiding and abetting; *N. A. R. vol. 1, pages 3, 8, 14, 18, 25, 28, 30, 36, 40, 42, 44, 45, 48, 51, 66, 130, 140, 146, 186, 198 and 245.* Where eleven prisoners were charged with the commission of repeated gang robberies, five of them concerned in cases attended with murder were sentenced to death; four (one of whom was a woman) engaged in several cases, of which one was accompanied with torture and beating, were sentenced to transportation for life; and the others, convicted of robbery, were sentenced to stripes and imprisonment in banishment for 14 years; *N. A. R. vol. 1, page 36.* Where the leaders of the gang have been sentenced capitally, the accomplices have been sentenced to transportation or imprisonment for life, or to imprisonment in banishment for 14 years; *N. A. R. vol. 1, page 154; vol. 4, pages 313 and 338; and vol. 5, page 11.* Where the principals were sentenced to death, the accomplices who did not appear to have taken any part in the murder were sentenced to transportation for life; *N. A. R. vol. 1, pages 12 and 29*:—so, where a prisoner confessed to having been engaged in a dacoity attended with murder, but there was no reason to believe that he had been immediately concerned in the murder, he was sentenced to transportation for life; *N. A. R. vol. 1, page 98.* Where the five principals were sentenced to death, two others who confessed that they formed part of the gang, but alleged that they remained in the boats while the others went to commit the robbery, and there was no other evidence against them, were sentenced to imprisonment in banishment for 14 years; *N. A. R. vol. 1, page 10.* In the case of a robbery by open violence committed by a hill-tribe of Le Mro, in Arracan, upon a village recently located near them, in which fourteen persons were murdered, nine others severely wounded, and five carried into captivity (of whom three were recovered, one died a natural death, and one was supposed to have been sold); and the prisoners offered no extenuating plea; the three chiefs and leaders were sentenced capitally, and the rest to imprisonment in banishment for 14 years; but they were all pardoned by government, at the court's recommendation, in consideration of their having been induced to give themselves up by a promise (though unauthorized) of impunity; *N. A. R. vol. 5, page 31.*—From the more recent cases reported, it seems to be the rule that those only of the prisoners who are proved to have been the leaders of the gang, or to have taken a more active part in the

Precedents.

Dacoity attended with murder: sentence of death or transportation for life.

Peculiar case.

The leaders only, or those who have taken the more active part in the murder, are usually sentenced to death;

and less severe sentences have been passed in some cases.

Case in which the prisoner eluded pursuit for 26 years.

Case attended with accidental death.

Accessories before and after the fact.

Cases of budhucks, or shaghalkhors ;

and sial-marua dacoits.

actual murder, should be sentenced to death: thus, where no one of the prisoners was proved to have been the leader, or to have been the actual murderer, or to have been more guilty than the others, all who were present aiding and abetting in the dacoity were sentenced alike to imprisonment for life in Alipore jail, or to transportation for life; and an accessory after the fact to imprisonment for 7 years; *N. A. R. vol. 3, pages 76 and 295; vol. 5, pages 38 and 153.* In a peculiar case, tried by the commissioner for the North-Eastern parts of Rungpore with the aid of assessors, four prisoners were sentenced to imprisonment in banishment for life, and four, whom the assessors, from their previous knowledge of the characters of the parties, considered most likely to have been led away by the others, were sentenced to imprisonment in banishment for 14 years; *N. A. R. vol. 3, page 246.* In one case, the two prisoners clearly shown to have been the leaders were sentenced to stripes and imprisonment for life in Alipore jail; and of the others, thirty were sentenced to stripes and imprisonment in banishment for 14 years, four to stripes and imprisonment for 7 years, and three in consideration of their extreme youth (not having attained the age of 15) to stripes alone; *N. A. R. vol. 4, page 179.* Where the prisoner was apprehended after having eluded pursuit for 26 years, and convicted of having been an accomplice, he was sentenced to imprisonment for life in Alipore jail; *N. A. R. vol. 4, page 12.* In a case of river-dacoity, where a man was presumed to have been drowned in endeavouring to escape from the dacoits, the prisoners were sentenced to stripes and transportation for life; *N. A. R. vol. 1, page 204.* Where a prisoner, convicted of being an accomplice in a dacoity attended with murder, was sentenced to death; a second, convicted of being an accessory before the fact, was sentenced to 14 years' imprisonment; a third, convicted of privity after the fact and receiving and secreting part of the plundered property, to imprisonment for 14 years; and a fourth, convicted of privity after the fact, to imprisonment for 7 years; *N. A. R. vol. 3, page 355.*

4151. The prisoners, of the *shaghalkhor* or *budhuck* caste, issuing from their haunts in the Oude territory, assumed the disguise of a raja and his retinue proceeding on a pilgrimage, entered the Company's territory, attacked a boat laden with treasure in the Behar district, and carried off the treasure, killing and wounding ten men. Having made good their retreat, they were proceeding the following year on a similar expedition, when they were apprehended. Mirhban Sing, the leader, was sentenced to death; 28, convicted of being accomplices, to stripes and transportation for life; 4, of privity and connivance in the said robbery and of being professed dacoits to stripes and imprisonment in banishment for 14 years, and then to find security for good behaviour; 76, of going forth to commit robbery and of being professed dacoits, to imprisonment in banishment for 7 years and then to furnish security; and 15, of going forth to commit robbery, to be imprisoned in banishment for 7 years; *N. A. R. vol. 2, page 125.(a)* Sixteen prisoners, convicted on

(a) In calling for a return of dacoities supposed to have been perpetrated by budhucks or other gangs from the Oude territories, the superintendent of police observed, that those cases may be generally supposed to have been perpetrated by professional robbers from Oude, in which "the attack has been made by a body of armed men early in the evening, cutting down all who opposed them, plundering only cash or jewels easily portable, and dispersing immediately afterwards, leaving no trace by which to follow them, as after the perpetration of a dacoity under such circumstances the gang will move from 30 to 50 miles before morning." See his C. O. No. 9 of 1840.

their own confessions of being *sial-marua* dacoits, and of having been concerned severally in one or more of eight separate cases of dacoity, three of which were attended with murder and wounding and four with wounding, were sentenced to transportation for life; capital punishment was remitted, because one of the judges, not being satisfied of the truth of their confessions to the specific dacoities charged, would have acquitted them; *N. A. R. vol. 3, page 313.*

4152. A prisoner convicted solely on his own confession of having gone forth armed in a gang with the criminal intent of robbing, and of having been present when, in the prosecution of this intent, the watchman of an orchard which they were robbing was killed, was sentenced, as he did not appear to have been actively concerned in the murder, to imprisonment for life: it is added in a note to the report, that “the prisoner was not one of those professed robbers, against whom the severe penalties of Reg. LIII. 1803 were particularly directed.” *N. A. R. vol. 1, page 316.*

Case of murder committed in prosecution of attempt to commit gang-robbery.

4153. On conviction of dacoity attended with wounding, burning, beating, or other personal violence, the most usual sentence has been for transportation for life; *N. A. R. vol. 1, page 45; vol. 2, pages 142, 166, and 185:* and stripes have sometimes been added: *N. A. R. vol. 2, page 10, and vol. 3, page 208.* Where one prisoner was convicted of being concerned in a robbery by open violence attended with wounding, and the others of knowingly receiving property obtained thereby, the former was sentenced to stripes and transportation for life, and the latter to stripes and imprisonment for 14 years; the wives of two of the prisoners though convicted of receiving the plundered property were discharged on muchalkas as they appeared to have acted under the control of their husbands; and another woman, also convicted of receiving, was released on the same terms in consideration of her old age and helplessness; *N. A. R. vol. 1, page 353.* Where the dacoits secretly entered the house, and afterwards on discovery had recourse to personal violence, they were sentenced in one case to stripes and 14 years’ imprisonment in Alipore jail, and in another case to imprisonment for 14 years. *N. A. R. vol. 2, page 217; and vol. 3, page 271.*

Dacoity attended with wounding or other personal violence.

Cases of wives receiving property plundered by their husbands.

Personal violence after secret entry.

4154. In unaggravated cases, the prisoners have been sentenced—to stripes and transportation for life; *N. A. R. vol. 2, page 40;*—to stripes and imprisonment for life; *N. A. R. vol. 1, page 304;*—the leader to transportation for life, and the others to imprisonment in banishment for 14 years; *N. A. R. vol. 1, page 20;*—to stripes and imprisonment for 14 years; *N. A. R. vol. 1, page 238.* A prisoner convicted of dacoity on the river unattended with any aggravating circumstances, was sentenced to stripes and transportation for life, in consideration of his being a chokeedar and his having previously stolen the boat in which he went to commit the dacoity; *N. A. R. vol. 2, page 150.* Where an accomplice was sentenced to imprisonment for 14 years, another prisoner convicted of privity was sentenced to 7 years’ imprisonment; *N. A. R. vol. 4, page 71.*

Unaggravated dacoity.

Case of a chokeedar.

Privity.

4155. Where the direct evidence to the recognition of the prisoners at the time of the robbery was unsupported by circumstantial evidence, the prisoners were acquitted; *N. A. R. vol. 1, page 178; vol. 2, page 165; and vol. 4, page 282.* The evidence of an

Acquittals from insufficient evidence in cases of dacoity.

approver, and the admission of three convicted accomplices, was held insufficient legal proof for conviction; *N. A. R. vol. 3, page 112*. So, where the only evidence against the prisoners consisted of their confessions, which appeared open to suspicion of having been improperly obtained in the first instance, the prisoners were released; *N. A. R. vol. 1, page 273; vol. 3, page 274; and vol. 4, page 269*. So, where the confessions of the prisoners were not taken down in the presence of the magistrate, and the evidence was otherwise insufficient, the prisoners were acquitted notwithstanding a futwa of conviction; *N. A. R. vol. 2, page 70*. Where the only proof against the prisoners was the discovery of certain property in their houses, which however was not satisfactorily recognized, the prisoners were released; *N. A. R. vol. 1, page 257*. So, where the depositions of the prosecutrix at the trial differed from her first statement at the thana in regard to those among the dacoits whom she said that she had recognized at the time; and where also there had been an improper delay in the record of confessions before the police; *N. A. R. vol. 6, page 226*.

Highway robbery
amounting to rob-
bery by open vio-
lence, attended
with murder,

4156. In cases of highway robbery amounting to robbery by open violence:—where the robbery was attended with murder, the prisoner was sentenced to death [the report of this case shows that the prisoner went forth with the intent to rob, but does not mention whether he was armed; this however is presumable, as he killed two persons travelling with him, one of whom had a sword]; *N. A. R. vol. 1, page 211*:—where the robbery was attended with beating from which the death of one person ensued, the prisoners were sentenced to transportation for life; *N. A. R. vol. 5, page 80*:—where there was wounding with intent to murder, the sentence was imprisonment for 14 years; in this case the session judge passed sentence without reference, but the court held that the disposal of the case was beyond his competence; *N. A. R. vol. 5, page 152*.—Where the prisoners in a large gang committed several highway robberies in the most daring manner, and resisted and severely wounded the kotwal and burkundazes sent to apprehend them, the instigators were sentenced to stripes and transportation for life, and the others to stripes and imprisonment for 14 years; *N. A. R. vol. 1, page 347*.—Where the magistrate committed the prisoners on a charge of highway robbery and wounding, and the session judge, after hearing the evidence in attestation of the mofussil confessions, and after the prisoners had pleaded to the above charge, returned the calendar to the magistrate to insert the words “intent to murder” after the word wounding; the prisoners were convicted by the court of the lesser charge only and sentenced to imprisonment for 14 years; *N. A. R. vol. 6, page 7*;—in a case of highway robbery attended with wounding, the sentence was mitigated to imprisonment for 14 years in consequence of the youth of the prisoner, and as this was his first offence; *N. A. R. vol. 2, page 1*:—in another case of the same nature two prisoners were sentenced to transportation for life, two to imprisonment for 14 years, and two convicted of privy to the robbery to imprisonment for 7 years; *N. A. R. vol. 2, page 121*. Where the prisoners were convicted of highway robbery attended with beating; the sentence was mitigated in one case, as it appeared to be the first offence committed by the prisoners, and as the prosecutor sustained no very serious injury, to stripes and imprisonment for 14 years; *N. A. R. vol. 2, page 97*: in another case, where the prosecutor was

with attempt to
murder,

with wounding;

with beating,

very slightly hurt, and under all the circumstances, the sentence was mitigated to imprisonment for 8 years; *N. A. R. vol. 3, page 64*: and in another case, as the prisoners were not old offenders, and were in a state of intoxication when the offence was committed, a mitigated sentence was passed of stripes and imprisonment for 7 years; *N. A. R. vol. 2, page 24*. In a case of highway robbery on horseback (*kazakee*), where the prisoner “had long been notorious, as being one of that daring description of robbers denominated kozaks, whose depredations are usually committed in the face of day, and who, relying on their expertness in eluding the pursuit of justice, rarely take the precaution to disguise their persons, or to conceal their mode of life, and in consequence are more frequently recognized than any other class of public offenders,” he was sentenced to transportation for life; *N. A. R. vol. 2, page 17*. Kazakee.

4157. In a case of highway robbery and murder, the prisoners were acquitted from doubt of the evidence of witnesses who swore to having seen the perpetration of the murder by them; *N. A. R. vol. 3, page 276*: so, the evidence of a single witness to the recognition of the prisoners as having belonged to the gang of robbers, was held insufficient for the conviction of the prisoners; *N. A. R. vol. 3, page 99*. And a voluntary confession of highway robbery was set aside from doubts of its truth excited by the probable motives leading to it; *N. A. R. vol. 3, page 242*. Acquittals in cases of highway robbery amounting to robbery by open violence.

NOTE.

In English law larceny has been defined to be “the wrongful or fraudulent taking and carrying away, by one person, of the mere personal goods of another, from any place, with a felonious intent to convert them to his (the taker’s) own use, and make them his own property, without the consent of the owner.” The taking and carrying away must be felonious, that is, done *animo furandi*; or, as the civil law expresses it, *lucri causâ*: but it is not necessary that the offender should contemplate any thing in the nature of a pecuniary advantage. The rule with regard to the *lucri causâ* is stated by the criminal law commissioners in the following terms: “the ulterior motive by which the taker is influenced in depriving the owner of his property altogether, whether it be to benefit himself or another, or to injure any one by the taking, is immaterial.” The commissioners also give the following definition of a felonious taking: the taking and carrying away are felonious, where the goods are taken against the will of the owner, either in his absence, or in a clandestine manner, or where possession is obtained either by force or surprise, or by any trick, device, or fraudulent expedient, the owner not voluntarily parting with his entire interest in the goods, and where the taker intends in any such case fraudulently to deprive the owner of his entire interest in the property against his will.—Where goods are once taken with a felonious intent, the offence cannot be purged by a restoration of them to the owner. Thus, the prisoner having robbed the prosecutor of a purse, returned it to him, saying, if you value the purse take it, and give me the contents, but before the prosecutor could do this the prisoner was apprehended; the offence was held to be complete by the first taking.

Proof of the taking—what manual taking is required] In order to constitute the offence of larceny, there must be an actual taking, or severance of the thing, from the possession of the owner; for as every larceny includes a trespass, if the party be not guilty of a trespass in taking the goods, he cannot be guilty of a felony in carrying them away. Still though there must be a taking, in fact, from the actual or constructive possession of the owner, yet it need not be by the very hand of the party accused. For if he fraudulently procure another, who is himself innocent of any felonious intent, to take the goods for him, it will be the

same as if he had taken them himself; as if one procure an infant, within the age of discretion, to steal the goods for him, or if, by fraud or perjury, he get possession of the goods by legal process without title.—The least removing of the thing taken from the place where it was before, though it is not quite carried off, is a sufficient taking and carrying away to constitute larceny; and upon this ground a guest, who had taken the sheets from his bed with an intent to steal them, and carried them into the hall where he was apprehended, was adjudged guilty of larceny.—So where a person takes a horse in a close, with intent to steal him, and is apprehended before he can get him out of the close.—The prisoner got into a waggon, and taking a parcel of goods which lay in the forepart, had removed it to near the tail of the waggon, when he was apprehended: the twelve judges were unanimously of opinion that, as the prisoner had removed the property from the spot where it was originally placed, with an intent to steal, it was a sufficient *taking* and *carrying away* to constitute the offence.—But where the prisoner had set up a parcel containing linen, which was lying lengthways in a waggon, on one end, for the greater convenience of taking the linen out, and cut the wrapper all the way down for that purpose, but was apprehended before he had taken any thing, all the judges agreed that this was no larceny, although the intention to steal was manifest. For a carrying away, in order to constitute felony, must be a removal of the goods from the place where they were, and the felon must, for the instant at least, have the entire and absolute possession of them.—The following case, though nearly resembling the last is distinguished by the circumstance that every part of the property was removed. The prisoner sitting on a coach-box took hold of the upper part of a bag which was in the front boot, and lifted it up from the bottom of the boot on which it rested: he handed the upper part of the bag to a person who stood beside the wheel, and both holding it endeavoured to pull it out, but were prevented by the guard: the prisoner being found guilty, the judges, on a case reserved, were of opinion that the conviction was right, thinking that there was a complete *asportavit* of the bag.—The prisoner was indicted for robbing the prosecutrix of a diamond ear-ring: it appeared that as she was coming out of the opera house, the prisoner snatched at her ear-ring, and tore it from her ear, which bled, and she was much hurt: the ear-ring fell into her hair, where it was found on her return home: on a case reserved, the judges were of opinion that this was a sufficient taking to constitute robbery; it being in the possession of the prisoner for a moment, separated from the owner's person, was sufficient, though he could not retain it, but probably lost it again the same instant that it was taken.—There must, however, be a possession by the party charged, however temporary. The prisoner stopped the prosecutor as he was carrying a feather bed on his shoulders, and told him to lay it down, or he would shoot him: the prosecutor laid the bed down, but before the prisoner could take it up he was apprehended: the judges were of opinion that the offence was not completed.—There must be a severance of the goods from the possession of the owner. The prisoner took a purse out of the pocket of the owner, but the purse being tied to a bunch of keys and the keys remaining in his pocket, and the party being apprehended while they remained in his pocket, it was held no larceny, on the ground that the owner still remained in possession of his purse, and that there was no *asportavit*. So where goods in a shop were tied to a string, which was fastened to one end of the bottom of the counter, and the prisoner took up the goods and carried them towards the door as far as the string would permit, and was then stopped, Eyre B. ruled that there was no severance, and consequently no felony.

Proof of the felonious intent in the taking—goods obtained by false process of law.] Where the possession of goods is obtained from the owner by means of the fraudulent abuse of legal process, the offence will amount to larceny. Thus it is laid down by Lord Hale, that if A has a design to steal the horse of B and enters a plaint of replevin in the sheriff's court for the horse, and gets him delivered to him and rides him away, this is taking and stealing, because done *in fraudem legis*.

Proof of the felonious intent in the taking—mistake.] The proof that the goods were taken with a felonious intent may be rebutted, by showing that the party charged with the larceny took them by mistake. Thus if the sheep of A stray from his flock into that of B, and the latter by mistake drives them with his

own flock, or shears them, that is not felony; but if he knows the sheep to be another's, and marks them with his own mark, that would be evidence of a felony. So, if he appear desirous of concealing the property, or of preventing the inspection of it by the owner, or by any other who might make the discovery, or, if being asked, he deny the having them, although the knowledge be proved; these likewise are circumstances tending to show the felonious intent.

Proof of the felonious intent in the taking—goods taken by trespass.] Although the party may wrongfully take the goods, yet, unless he intended to assume the property in them, and to convert them to his own use, it will amount to a trespass only, and not to a felony. Thus if A leaves his harrow in the field, and B having land in the same field uses the harrow, and having done so returns it to its place, or informs the owner, this is only a trespass.—In the same manner if A takes away the goods of B, openly before him or other persons, this carries with it evidence only of a trespass.—So of a servant riding his master's horse upon his own business.—The two prisoners were charged with stealing two horses: it appeared that they went in the night to an inn kept by the prosecutor, and took a horse and mare from his stable, and rode about thirty-three miles to a place, where they left them in the care of the ostler, stating that they should return: they were apprehended the same day, about fourteen miles from the place: the jury found the prisoners guilty, but added that they were of opinion they merely meant to ride the horses to this place, and to leave them there; but that they had no intention either of returning them, or making any further use of them: the judges, upon this finding, held it to be a trespass only and no larceny: they said there was no intent in the prisoners to change the property, or to make it their own, but only to use it for a special purpose, that is, to save their labour in travelling: the judges agreed that it was a question for the jury, and that if they had found the prisoners guilty generally upon this evidence the verdict could not have been questioned.—So where, upon an indictment for stealing a horse, two saddles, &c., it appeared that the prisoner got into the prosecutor's stables and took away the horse and the other articles altogether; but that when he had got to some distance he turned the horse loose, and proceeded on foot, and attempted to sell the saddles; Garrow B. left it to the jury to say, whether the prisoner had any intention of stealing the horse; for that if he intended to steal the other articles, and only used the horse as a mode of carrying off the other plunder more conveniently, and, as it were, borrowed the horse for the purpose, he would not in point of law be guilty of larceny.—The prosecutor met the prisoner, whom he knew to be a poacher, and seized him; the prisoner getting free, wrested a gun from the hands of the prosecutor, and ran away with it; it was proved that the next day the prisoner said he would sell the gun, and it was never found; Vaughan B. told the jury, upon the trial of the prisoner for stealing the gun, that he might imagine that the prosecutor would use the gun so as to endanger his life, and if so, his taking it under that impression would not be felony; but if he took it, intending at the time to dispose of it, it would be felony.

Proof of the felonious intent in the taking—goods taken under a fair claim of right.] If there be any fair claim of property or right in the prisoner, or if it be brought into doubt at all, the court will direct an acquittal. Thus where the owner of land takes a horse damage feasant, or a lord seizes it as an estray, though perhaps without title, yet these circumstances explain the intent, and show that it was not felonious; but these facts may be rebutted, as by showing that the horse was marked in order to disguise him.—After a seizure of uncustomed goods, several persons broke, at night, into the house where they were deposited, with intent to retake them for the benefit of the former owner; and it was held that this design rebutted the presumption of a felonious intent.

Proof of the felonious intent in the taking—goods procured by finding.] The law respecting the converting of goods found, to the finder's own use, depends upon the question of felonious intention. "If," says Lord Hale, "A finds the purse of B in the highway, and takes and carries it away, and the case has all the circumstances that prove it to be done *animo furandi*, as denying or secreting it, yet it is not felony."—But, he adds, where a man's goods are in such a place, where ordinarily they are or may be

lawfully placed, and a person takes them *animo furandi*, it is felony, and the pretence of finding must not excuse.—The distinction, therefore appears to be that where the goods are found in such a situation that the owner may be presumed to have abandoned the property in them, the converting of them will not be a larceny; but if, from circumstances, the finder must infer that there has been no such abandonment, it will be felony to convert them without making due inquiry as to the owner. Thus it is said by Lord Hale, that if a man hides a purse of money in his corn-mow, and his servant, finding it, takes part of it—if, by circumstances, it appear that he knew his master laid it there, it is felony; but, then the circumstances must be pregnant, otherwise it may be reasonably interpreted to be a bare finding, being an unusual place for such a *depositum*.—In the following cases, although, in strictness, the goods were acquired by finding, yet the converting of them was held to be larceny. A gentleman left a trunk in a hackney coach, and the coachman taking it converted it to his own use, this was held to be larceny; for the coachman must have known where he took the gentleman up, and where he set him down, and ought to have restored his trunk to him.—In a similar case, where a box had been left in a coach, and was found at the house of a Jew, where the coachman had uncorded it, and taken out several articles, some of which were missing; the coachman being indicted for larceny, the judge directed the jury that, if they thought that the prisoner had detained the box merely in the hope that a reward would be offered for it, and that he meant then to return it to the owner, they ought to acquit him; but if they thought that he had uncorded the box not merely from curiosity, but with an intention to embezzle any part of its contents, and that he had actually taken any of the goods mentioned in the indictment, it would be matter of legal consideration, whether a person so guilty should not be reached as a felon: the jury having found the prisoner guilty, upon a case reserved, the verdict was approved of by the judges.—The prosecutor, having had his hat knocked off in a quarrel with a third person, the prisoner picked it up, and carried it home: being indicted for larceny, Park J. said, “If a person picks up a thing and knows that he can immediately find the owner, but, instead of restoring it to the owner, converts it to his own use, this is felony.”—A pocket-book, containing bank-notes was found by the prisoner in the highway, and converted by him to his own use; upon which Lawrence J. observed, that if the party finding property in such manner knows the owner of it, or if there be any mark upon it, by which the owner can be ascertained, and the party, instead of restoring it, converts it to his own use, such converting will constitute a felonious taking.—And in a similar case, Gibbs C. J. stated to the jury that it was the duty of every man, who found the property of another, to use all diligence to find the owner, and not to conceal the property (which was actually stealing it), and appropriate it to his own use.—Where the prisoner having received a bureau for the purpose of repairing it appropriated 900 guineas, which he found in a secret part of it, it was considered felony.—Evidence to show that the finder endeavoured to discover the true owner, and kept the goods till it might be reasonably supposed that he could not be found; or that he made known his acquisition so that he might make himself responsible for the value, in case he should be called upon by the owner, are circumstances to rebut the presumption of a felonious taking and conversion.—The criminal law commissioners say: “the intention of a person taking property by finding will be felonious or not, according as his conduct, in omitting to use due diligence to discover the owner, or in concealing the property, or in other circumstances, shows that, in the taking, he had or had not a design to deprive the owner altogether of his property.”—Where a servant, indicted for stealing bank-notes, the property of her master, in his dwelling house, set up in her defence that she found them in the passage, and not knowing to whom they belonged, kept them to see if they were advertised; Park J. held that she ought to have inquired of her master, whether they were his or not, and that not having done so, but having taken them away from the house, she was guilty of larceny.

Proof of the felonious intent in the taking—goods taken by wife—or by wife and a stranger.] If a wife take goods of which the husband is the joint or sole owner, the taking is not larceny, because they are in law but one person, and the wife has a kind of interest in the goods.—Therefore, where the wife of a member of a friendly society, stole money belonging to the society, lodged in a box in her husband's custody

under lock of the stewards of the society, it was held by the judges not to be larceny.—Whether, where a stranger and the wife jointly steal the husband's property, it is larceny in the stranger, has been the subject of contradictory decisions. Where it appeared that the prosecutor's wife had assisted in carrying off the goods, and had continued to cohabit with the prisoner: on objection, the court ruled, that no person could be convicted of a felony in stealing goods when they came into his possession by the delivery of the prosecutor's wife. But in a subsequent case, referred to the opinion of the judges, it was held that where the wife and a stranger steal the goods of the husband, the stranger is guilty of larceny.

Proof of the taking—with reference to the possession of the goods.] It has been already stated, that in order to constitute larceny, there must be such a taking of the goods, as would, without the felonious intent, amount to a trespass. Therefore, if the party obtain possession of the goods lawfully, as upon a trust, for or on account of the owner, by which he acquires a kind of special property in them, he cannot afterwards be guilty of felony in converting them to his own use, unless by some new and distinct act of taking, as by severing part of the goods from the rest with intent to convert them to his own use, he thereby determine the privity of the bailment and the special property conferred upon him, in which case he is as much guilty of a trespass against the virtual possession of the owner, by such second taking, as if the act had been done by a mere stranger.

Proof of the taking—with reference to the possession—original taking not felonious.] In cases, therefore, where the original taking of the goods is not *animo furandi*, a subsequent conversion of them to the party's own use will not constitute larceny. Upon an indictment for stealing, it appeared that the prosecutor's shop (containing the articles mentioned in the indictment) being on fire, his neighbours assisted him in removing his goods for their security; the prisoner probably had removed all the articles which she was charged with stealing, when the prosecutor's other neighbours were thus employed; she removed some of the articles in the presence of the prosecutor, and under his observation, though not by his desire; upon the prosecutor applying to her next morning, she denied that she had any of the things belonging to him, but they were found concealed in her house; the jury found her guilty, but said, that in their opinion when she first took the goods from the shop, she had no evil intention, but that such evil intention came upon her afterwards; and upon reference to the judges, they all held the conviction wrong, for if the original taking were not with intent to steal, the subsequent conversion was no felony, but a breach of trust.—So, where a letter containing a bill of exchange was by mistake delivered to another person of the same name as the person to whom it was addressed, and the person to whom it was so delivered converted the bill of exchange to his own use, being convicted of larceny for this act, a case was reserved for the opinion of the judges, who held the conviction wrong, on the ground that it did not appear that the prisoner had any *animus furandi*, when he first received the letter; and a pardon was recommended.

Proof of the taking—with reference to the possession—original taking not felonious—bailees.] The cases which most usually occur, illustrative of this doctrine, are those where goods have been delivered into the hands of a bailee for a special purpose, who thereby acquires a right to the possession, and who, if he converts them, while in his possession as bailee, to his own use, even *animo furandi*, as he is not guilty of a trespass, is not guilty of larceny by that act. Thus, if goods are delivered to a carrier to be conveyed, and he steals them on the journey, it is no felony.—So where a man delivered his watch to the prisoner to be repaired, who, instead of repairing it, sold it, this was ruled by Vaughan B. to be no felony. So, where the prosecutor had delivered a horse to the prisoner to be agisted at 1s. 6d. per week, and the latter after keeping the animal for one week, for which he received payment, sold it in the course of the second week; the prisoner having been convicted of larceny, the judges held the conviction wrong.—Upon the principle that it is not felony in a bailee to convert to his own use the goods bailed to him, a nice distinction has been grafted, which seems, says Mr. East, to stand more upon positive law, which cannot now be questioned, than upon sound reasoning. The distinction is thus stated by Lord Hale: if a man delivers goods to a carrier to carry to Dover, and he carries them away, it is no felony; but if the carrier have a bale or

trunk with goods in it delivered to him, and he breaks the bale or trunk, and carries away the goods *animo furandi*, or if he carries the whole pack to the place appointed, and then carries it away *animo furandi*, it is a felonious taking; but that must be intended where he carries them to the place, and delivers or lays them down, for then his possession by the first delivery is determined, and the taking afterwards is a new taking. This distinction has been recognized and acted upon in numerous cases, not only of carriers and other bailees, where the bailment has been determined by breaking bulk &c., but likewise in the case of other persons, having a special property, where the contract conferring the special property has been terminated by the tortious act of the party. A farmer sent forty bags of wheat to the prisoner, who was a warehouseman, for safe custody; the prisoner took eight of the bags, and shooting the wheat out on the floor, mixed it with four bags of inferior wheat, and sold the whole twelve for his own benefit; he replaced the wheat thus taken from the prosecutor with inferior wheat of his own; it did not appear that there was any severing of part of the wheat in any one bag, from the residue of the wheat in the *same* bag; the prisoner being convicted of larceny, the judges were unanimously of opinion that the conviction was right, that the taking of the whole of the wheat out of any one bag, was no less a larceny than if the prisoner had severed a part from the residue of the wheat in the same bag, and had taken only that part, leaving the remainder of the wheat in the same bag. In order, therefore, to establish a larceny of goods which have been bailed, some act determining the bailment must be proved.—Where A asked the prisoner, who was not her servant, but only a casual acquaintance, to put a letter in the post, telling her it contained money, and the prisoner broke the seal and abstracted the money before she put it in the post; the judges held that she was guilty of larceny.—Although a contrary opinion appears to have been formerly entertained, yet it is now settled, that when the owner parts with the possession of goods for a special purpose, and the bailee, when that purpose is executed, neglects to return, and afterwards disposes of them, if such bailee had not a felonious intention when he originally took the goods, the subsequent withholding and disposing of them will not constitute a new felonious taking, nor make him guilty of felony.

Proof of the taking—with reference to the possession of the goods—cases of servants.] Where a person has the bare charge or custody of goods, the legal possession of such goods remains in the owner, and larceny may be committed by the person having such a bare possession or custody. He that has the care of another's goods, says Lord Hale, has not the possession of them, and therefore may, by his felonious embezzling of them, be guilty of felony: as the butler who has the charge of his master's plate, the shepherd who has the charge of his master's sheep; and so it is of an apprentice that feloniously embezzles his master's goods.—So where a carter goes away with his master's cart.—The prisoner was a drover and had been employed by the prosecutor as such, off and on, for nearly five years; being employed by him to drive a number of sheep to a fair, he sold several of them, and applied the money to his own purposes; being indicted for larceny he was found guilty; but the jury also found that he did not intend to steal the sheep at the time he took them into his possession; on a case reserved, all the judges who met were of opinion, that as the owner parted with the custody only, and not with the possession, the prisoner's possession was the owner's, and that the conviction was right.—So, where the prosecutor delivered to his servant a sum of money to carry to a person, who was to give him a bill for it, and the servant appropriated it to his own use, the judges were of opinion that this was not a mere breach of trust, but a felony. And where the servant of the prosecutor went to her master's wife, and told her she was acquainted with a person who could give her ten guineas' worth of silver, and the prosecutor's wife gave her ten guineas for that purpose, which she ran away with, she was found guilty of the larceny.—In order to render the offence larceny, where the property is taken by a servant, it must appear that the goods were at the time in the possession of the master. It is not, however, necessary that they should be in his *actual* possession; it is sufficient if he has a constructive possession, or possession in law. Therefore, where a man purchases goods, and sends his servant to receive them, and the servant carries them away, it is larceny, for the property carries with it the possession in law. On the other hand, unless the possession of the goods, actual

or constructive, be in the prosecutor, no larceny can be committed upon them with regard to him. This distinction is very material, as drawing the line between larceny and embezzlement.—If the goods are not in the actual or constructive possession of the master at the time they are taken, the offence of the servant in taking them will be embezzlement, and not larceny. Therefore, where goods in the possession of a third person, and not yet delivered over to the master, are delivered to the servant, who appropriates them to his own use, this is not a larceny, for the time of the larceny must be referred to the period of the receipt of the goods by the servant, at which time there was no possession in the master, without which there could be no trespass, and no larceny. If, says Mr. East, the master had no otherwise the possession of the goods than by the bare receipt of his servant, upon the delivery of another for the master's use, and the servant have done no act to determine his original, lawful, and exclusive possession, as by depositing the goods in his master's house, or the like—although to many purposes, and as against third persons, this is in law a receipt of the goods by the master, yet it has been ruled otherwise in respect of the servant himself, upon a charge of larceny at common law, in converting the goods to his own use; because as to him, there was no tortious taking in the first instance, and consequently no trespass, as there is where a servant converts to his own use property in the virtual possession of his master.

Proof of the taking—distinction between larceny and obtaining goods, &c. by false pretences.] As the character of the transaction depends upon the intention of the parties, that intention must determine the nature of the offence. It is not however sufficient to show simply a felonious intent, an *animus furandi* on the part of the offender; the mere intent to commit felony, or rather fraudulently to appropriate the matter in question to the party's own use, is not sufficient to render the taking felonious, where the owner, although induced by the false representations of the offender, intends to part with his property in the matter delivered. The law of Scotland is the same as our own on this point; and the principle of the distinction between larceny and false pretences is well expressed in the following passage from a writer on the criminal law of that country; "Where possession is obtained by such false representations as induce the owner to sell or part with the property, the crime is swindling. But a variety of cases frequently occur, in which the possession is obtained, not on any contract or agreement adequate to pass the property, but on some inferior title, adequate to give the prisoner the right of *interim* custody. The distinction between such cases, and those in which the property is obtained on a false pretence, lies here,—that in the one case, the proprietor has agreed to transfer the property, and therefore he has only been imposed upon in the transaction; in the other, he has never agreed to part with his property, and therefore the subsequent appropriation is theft."—There is a numerous class of cases in which goods have been obtained from the owner with a fraudulent intent, but where the owner only intended to part with the possession, and not with the property in them. In these cases it has been held, that if the prisoner had the *animus furandi* at the time of the taking, and has converted the goods to his own use, the offence amounts to larceny. It has been generally in cases of this kind, that the distinction between larceny and obtaining goods under false pretences has been lost sight of. The false pretences are only the mode employed by the offender to procure the possession of the property, and render the case no less a larceny than if he had taken the property without the knowledge of the owner, or by force. The real distinction is, whether the owner intended to pass the right of property; if he did not, it is the subject of an indictment for larceny—if he did, of an indictment for obtaining money by false pretences.—But if there be only a negotiation for a purchase, and such purchase be not complete, the taking will amount to larceny, if there be a felonious intent on the part of the prisoner; as in the following case, which well illustrates the distinction between the offence of larceny, and of obtaining goods under the false pretence of purchasing them. The prisoner was indicted for stealing two silver cream ewers from the prosecutor, a silversmith; he was formerly servant to a gentleman, who dealt with the prosecutor, and, some time after he had left him, he called at the prosecutor's shop, and said that his master (meaning the gentleman whose service he had left) wanted some silver cream ewers, and desired the prosecutor to give him one, and to put it down to his master's account; the prosecutor gave him two ewers, in order that his master might select the one he liked best; the prisoner took both, sold them, and absconded; at the trial, the prosecutor swore that he

did not charge the master (his customer) with the cream ewers nor did he intend to charge him with either, until he had first ascertained which of them he had selected ; it was objected for the prisoner, that this amounted merely to obtaining goods under false pretences ; but Bayley J. held, that as the prosecutor intended to part with the possession only, and not with the right of property, the offence was larceny, but that if he had sent only *one* cream ewer, and had charged the customer with it, the offence would have been otherwise.

Proof of the things stolen.] The goods taken must appear in evidence to be *personal goods* ; for none other can be the subject of larceny at common law. At common law larceny could not be committed of things that savoured of or adhered to the freehold, as trees, grass, bushes, bridges, stones, the lead of a house, or the like : the stealing such things was only trespass : but if these things be severed from the freehold, as wood cut, stones dug out of a quarry, &c., then felony might be committed by stealing them, for then they are personal goods : and so strict was the rule in this respect, that a larceny could not be committed even of title-deeds, or any other charter or writing concerning the realty, or even of the box in which they were kept. This state of the law has been remedied by various statutes, which make it felony to steal the ore of certain metals or stones from mines ; to steal, or destroy or damage with intent to steal, any trees, saplings, shrubs, or underwood ; to steal, or destroy with intent to steal, any fence, railing, or gate ; or any cultivated root or plant ; and to steal, or rip, cut, or break with intent to steal, any glass or wood work, or any thing made of metal, or utensil, or fixture, fixed to any building, or anything made of metal fixed in any land, being private property, or for a fence to any dwelling house &c., or in any place dedicated to public use or ornament :—and so it is now a misdemeanor to steal any record, &c., or any original document belonging to a court of record, or relating to any cause or matter, civil or criminal, begun, depending, or terminated, in any court of record or equity ; or to steal, or fraudulently destroy, or conceal, any testamentary instrument relating to any real or personal estate ; or to steal any paper or parchment being evidence of the title to any real estate. Bonds, bills, &c., being mere *choses in action*, are not the subject of larceny at common law, for they are of no intrinsic value ; but now by different statutes it has been constituted felony to steal any valuable security, as for money or the payment of money, or entitling or evidencing the title of any person or body corporate to any share or interest in any public stock, or in any fund, or savings-bank &c : and it is felony if any person employed under the post-office steals, or for any purpose whatever embezzles, secretes, or destroys a post letter : so, to steal any chattel, money, or valuable security out of a post letter, is felony : and if any person in the public service, entrusted by virtue of his office with the receipt, custody, management, or control of any valuable security, embezzles, or fraudulently misapplies the same, or any part thereof, it is felony. Larceny at common law cannot be committed of things which are not the subject of property, as of a dead corpse ; but it is a high misdemeanor to disinter a dead body for the purpose of dissection, or to sell and dispose of it for gain and profit. So, of things in which no person has any determinate property, as treasure trove, waifs, &c., till seized, it has been said that larceny cannot be committed ; but it would seem that the true owner, though unknown, has still a property in them, before seizure by the lord, unless there be circumstances to show an intended dereliction of the property : the same has been said of wreck ; but now by statute it is felony, to plunder or steal any part of a ship or vessel in distress, wrecked, stranded, or cast on shore, or any goods, merchandise, or articles of any kind, belonging to such ship or vessel ; but if articles of small value, stranded or cast on shore, be stolen without circumstances of cruelty, outrage, or violence, the offender may be punished for simple larceny. Again, no larceny at common law can be committed of such animals in which there is no property either absolute or qualified ; as of beasts that are *feræ naturæ*, and unreclaimed ; such as deer and hares, in a forest ; fish in an open river or pond ; or wild fowls, at their natural liberty. But if they are reclaimed or confined, and may serve for food, it is otherwise : so all valuable domestic animals, as horses, and all animals *domitæ naturæ* which serve for food, as swine, sheep, poultry, and the like, and the product of any of them, as eggs, milk from the cow while at pasture, wool pulled from the sheep's back feloniously ; and the flesh of such as are *feræ naturæ* ; may be the subject of larceny ; but as

to other animals which do not serve for food, such as dogs, ferrets, though tame and saleable, and other creatures kept for whim and pleasure, stealing these does not amount to larceny, at common law. But the statutes have made it felony, or otherwise punishable to steal or kill, &c. deer which are private property; and special punishments have been enacted for taking or killing hares or conies in any warren, &c.; for stealing any beast or bird ordinarily kept in a state of confinement, not being the subject of larceny at common law; knowingly being in possession thereof, or of the skin or plumage thereof; for killing wounding or taking any dove-house pigeon, under such circumstances as do not amount to larceny at common law; and for stealing dogs. To take or destroy any fish in any water which shall run through or be in any land adjoining or belonging to the dwelling house of any person being the owner of such water, and having a right of fishery therein, is a misdemeanor; and to take and destroy fish in any other water being private property, or in which there shall be any private right of fishery; and to take and destroy fish by angling in the day-time, in either description of water; is punishable upon summary eviction by fine varying according to the nature of the offence.—*Roscoe and Archbold*.

SECTION II.

OF PLUNDERING AND CHOHAREE.

4158. Persons convicted of plundering (loot-oo-taraj) not amounting to robbery by open violence, as defined in cl. 1, sect. 3, Reg. LIII. 1803 (in consequence of the absence of proof of the *criminal intent* of committing robbery at the time of the going forth of the party, which is a necessary ingredient of the foregoing offence as declared in the above regulation) are liable to discretionary punishment. And this is the case whether the property be seized and forcibly brought away, and appropriated to their own use by the plunderers, or whether it be merely wasted and destroyed.(a) C. O. No. 80 of vol. 4. *L. P.*

Subject to discretionary punishment.

(a) This order was issued on the following futwa delivered by the law officer of the sudder court:—

1st Question.—A number of persons are sent to commit violence in a house, for such a purpose as to beat the owner, or carry some person away by force, or to prevent a marriage, or the like. Robbery or plunder of any property from *any person* is not a part of the intention with which they go to the house; but, being there, they seize and forcibly bring away and appropriate to their own use the articles of property they find in the house. How is plunder of this kind, committed *not on any person*, but yet committed openly, regarded by the Mahomedan criminal law?—Is it punishable as a crime, and under what head of the Mahomedan law, and to what punishment is it liable? State your opinion and name the authorities.

Answer to the 1st Question.—The offence in question (*i. e.* plunder of the description mentioned in the question) is a crime under the head of *ghush*, or usurpation, because *ghush* in its *literal* sense means the forcibly taking a thing from another, and in *law* it signifies the taking of the property of another (provided it be capable of being valued and be sacred),* without the consent of the owner, in such a manner as to destroy the possession of the owner. If the same is committed knowingly and wilfully, the act is held to be a criminal one, and the offender becomes responsible for a *ziman*, or compensation; and if it is committed erroneously, the act is nevertheless liable for compensation, because a compensation is the right of man, and it cannot be dispensed with owing to the actor not having wilfully committed the act, but in this case the act will not be a criminal one, as it is only an erroneous offence. In the above case, the offenders will also be liable to punishment by *tazeer*, at the discretion of the hakim.

* Sacred properties are those which are regarded and respected as such under the Mahomedan law. They are the properties of Mussulmans, of *zimmis*, *viz.*, foreigners who have *permanently* settled themselves under the protection of the Mahomedan ruler, and of *mustamins*, *viz.*, foreign traders, &c., who have temporarily (for any period under one year) settled themselves under the protection of the Mahomedan ruler.

4159. Such cases are to be entered in the criminal statements as “riotous assault with forcible plundering (or destruction) of property, not amounting to dacoity.” C. O. No. 80 of vol. 4. *L. P.*

When offence is doubtful, charge to be on both counts.

4160. In cases committed to the sessions, if there should be a doubt as to the exact offence, whether dacoity or riotous assault with plunder, the prisoners are to be charged on both counts, so that, on failure of conviction of the one offence, it may be had of the other. C. O. No. 80 of vol. 4. *L. P.*

Distinguished from theft by the absence of the *animus furandi* in the taking.

4161. Where the property is not taken *animus furandi*, a subsequent appropriation of the property will not warrant a conviction of theft, but the prisoner may be punished for wrongful taking. Reports *W. P.* 1855, part 2, page 749.

Nature of offence to depend on the concert with which prisoners act.

4162. When the prosecutor's boat was wrecked and the villagers carried off the property, and the magistrate sentenced forty of the villagers to imprisonment and fine under sect. 19, Reg. IX. 1807; and the session judge recommended that the sentence be quashed, and that the magistrate be directed to commit the case to the sessions as one of robbery or theft; the court observed that it would seem that there was no concerted and conjoint plot among the plunderers to act together for one common object; that every man might probably have come to appropriate, and carry off, whatever he could for himself; and that each must, in that event, be held responsible for what he himself did, and was, consequently, punishable within the limits of a magistrate's authority as for a misdemeanor, unless there were distinct evidence against him of carrying off property of a value, which, in a case strictly of theft, would take the charge out of the magistrate's competency. Reports *L. P.* 1852, part 2, page 793.

Ruling of the court under the Mahomedan law.

4163. In order to make the offence theft, there must be a secret entry into a house by night; though, if the commission be during the night, a subsequent violence, after a stealthy and clandestine entry, will not take away the character of theft. This was ruled in a case in which the prisoners entered the house of the prosecutrix at night by the door, and carried off all her property, compelling her by force to remain quiet during the commission of the act. It was held not to be theft under the Mahomedan law. Reports *L. P.* 1853, part 2, page 143.

Rules regarding wrecks of boats with merchandize.

4164. It being apprehended that the wreck or burning of boats laden with merchandize is often occasioned either by the misconduct of the boatmen, or by the rapacity of the inhabitants along the river banks, who thus endeavour to conceal the crime of which they have been guilty, magistrates are required to exercise the greatest vigilance on such occasions. Enquiry must always be made into the cause of such events and a report furnished by the darogah to the magistrate. Whenever on the complaint of the charhandar or officer in

2nd Question.—State the like opinion and authorities if the property be not carried away and appropriated, but wasted and destroyed?

Answer to the 2nd Question.—In this case also the offender will be responsible for compensation of the property destroyed and wasted, and liable to punishment by *tazeer*. Quotes a well-known Arabic example to the effect that “whoever shall destroy another's property must be liable for compensation.”

charge of the boat on the part of the owners of the cargo, or from any other sufficient cause, there be reason to suppose that the loss or destruction of the boat is owing to the wilful misconduct of the boatmen or the violence of lawless depredators, a searching enquiry should be made into the circumstances, and the suspected persons should be arrested and dealt with as the law directs. Every means must also be taken for the preservation of the goods which are saved from the boat. For this purpose the charhandar should not be unnecessarily interfered with, but he must be supported and protected in the discharge of his duty. If there be not present any charhandar or person empowered to act for the owners, the police must themselves take charge of the goods. In order the better to enable the owners of goods to keep a check on their agents, and to inform themselves of the real cause of the losses they may sustain, they are invited, whenever they hear of the loss of a boat, to address to the magistrate, post-paid, a communication either in English or Oordoo in the annexed form.(a) The magistrate to whom it is addressed is to cause a brief extract to be drawn up in his office, explaining in Oordoo the circumstances of the case, so far as they can be ascertained, and is to forward it for the information of the owner through the magistrate of the district in which he may reside. Magistrates are to use every precaution that the vigilance, which is exercised for repression of wrong, be not made the means of petty extortion from well-conducted and unoffending travellers or traders. Commissioners are to notice such cases in their annual reports. C. O. Govt. *W. P.* No. 1638, May 5, 1849.

4165. Five prisoners convicted on strong presumption of having perpetrated the wilful murder of a charhandar, in charge of property on board a boat to which they were attached as boatmen, and of having embezzled the said property, and sunk the boat, were sentenced to stripes and transportation for life; *N. A. R. vol. 2, page 28*. Where the prisoners were convicted of plundering a stranded boat, and the offence did not amount to robbery by open violence, they were sentenced to imprisonment for three years; *N. A. R. vol. 2, page 315*. When the crew of a stranded vessel broke open the box of a passenger and appropriated its contents, they were convicted of theft, and sentenced to imprisonment for three years; *N. A. R. vol. 5, page 180*.

4166. Where a prisoner was convicted of having joined and associated with a band of chohars, and of having at different times, at night, in company with gangs of chohars

Precedents.

Plundering attended with murder;

unaggravated.

Choharee.

(a)

FORM OF APPLICATION TO MAGISTRATES.

I have the honor to inform you that I have received information of the loss of goods, dispatched hence by boat as by the annexed memorandum.—With reference to the government notification of the 5th May, 1849, I shall feel obliged by such information regarding the cause and extent of the loss as you may be able to afford me.

I have, &c.

To be signed by full name legibly written and address.

Description and size of boat.	Name and residence of charhandar.	Name and residence of manjee.	Description of cargo.	Where said to have been lost.	How supposed to have been lost.	REMARKS.
						Here may be entered any suspicious circumstances that may be known regarding the loss.

armed with offensive weapons, extorted by intimidation quantities of grain from several persons; the futwa declared that the offence was not specifically provided for by any stated penalty in the Mahomedan law, but that it was very similar to *katta-oot-tarik*, or highway robbery, and liable to discretionary punishment by tazeer; and the court, taking into consideration all the circumstances of the case, and the offence not having been especially provided for by any regulation, sentenced the prisoner, under the discretionary power vested in them by cl. 3, sect. 7, Reg. LIII. 1803, to stripes and transportation for life. *N. A. R. vol. 1, page 336.*

Plundering, attended with homicide;

4167. A large body of men armed with spears, clubs, and swords, and having lighted torches with them, attacked the house of a person for the purpose of carrying off his wife; the woman however escaped, but in the progress of the outrage her husband received a wound from a spear of which he died the following day; and the house was then plundered; the prisoners, convicted of being accomplices in the attack and plunder, were sentenced, the one who gave the fatal blow to imprisonment for life, the leader and contriver of the plot to imprisonment for 14 years, and the rest for 7 years; *N. A. R. vol. 4, page 49.* Where the prisoners were convicted of being accessaries before the fact to the plunder of a boat laden with grain by a large body of villagers, they were sentenced to imprisonment for 5 years; *N. A. R. vol. 1, page 391.*

unaggravated.

SECTION III.

OF THEFT AND ROBBERY.

Definitions.

The absence of ownership in the thing stolen does not affect the guilt of the theft.

4168. A person being charged with stealing a brahmini bull, which had been dedicated to religion and allowed to wander about without restraint, it was held that the fact of there being no ownership in any individual did not affect the criminality of the act, which must depend altogether on the *animus* by which the accused was actuated. Const. No. 803.

Appropriation by a servant of his master's property.

4169. The clandestine removal by a servant from his employer's residence of property placed under his custody by his employer, with the intent of appropriating such property to himself, amounts to theft. But where the servant appropriates the property without removing it from the premises of his employer, the offence amounts to embezzlement only. *N. A. R. vol. 5, page 165.* So, where a servant who had charge of his master's property removed and disposed of it for his own use, it was held that he had stolen it, because the possession of it had not been relinquished by his master when he entrusted the prisoner with the care of it. If the prisoner had pledged the property with his master's sanction and appropriated the money to his own use, he would have been guilty of embezzlement. *Reports L. P. 1854, part 1, page 776.* So, where a servant received from his master 500 rupees to convey to another person and appropriated it, he was convicted of theft. *Reports W. P. 1855, part 2, page 174.*

4170. Where the crew of a stranded vessel broke open a box belonging to a passenger (who had left the vessel), removed the property, and appropriated it to themselves, they were convicted of theft; and the conviction by the magistrate “of the fraudulent appropriation of the property of the prosecutor” was quashed. *N. A. R.* vol. 5, page 180.

Appropriation by crew of a stranded vessel of property of a passenger.

4171. The court admitted the distinction acknowledged by English law between theft and fraud when the goods have been obtained by false pretences, which depends upon the question whether the owner intended to pass the right of property or merely the possession. “The taking and carrying away are felonious, where the goods are taken against the will of the owner, either in his absence or in a clandestine manner, or where possession is obtained by force or surprise, or by any trick, device, or fraudulent expedient, the owner not voluntarily parting with his entire interest in the goods, and where the taker intend, in any such case, fraudulently to deprive the owner of his entire interest in the property against his will.” *Reports W. P.* 1856, part 1, page 645.

Distinction between theft and fraud depends on the intent of the owner to pass the right of property in the goods or merely possession.

4172. In all cases of theft, whether in a house, ware-house, or other place, or from the person of another (not coming within the provisions of the regulations in force for the punishment of robbery by open violence, or the provisions of cl. 1, sect. 2 of this regulation, *i. e.* cases of burglary), if the theft, or the attempt to commit the same, has been accompanied with murder or with an attempt to commit murder; or with wounding, burning, severe corporal injury, or other aggravating act of personal violence; it is the duty of the magistrate to commit the whole of the prisoners, who appear from the evidence adduced to have been concerned, either as principals or accomplices, in the offence, to take their trial before the sessions court. *Reg. XII.* 1818, sect. 3, cl. 2.

Commitment.

Cases which must be committed; if attended with murder or severe personal injury;

4173. In cases of theft where the amount or value stolen exceeds the sum of three hundred rupees, the amount is to be deemed a circumstance taking the case out of the magistrate's jurisdiction as to passing sentence on the accused, and is to make it necessary for him to commit the accused for trial to the sessions court. *Reg. IV.* 1820, sect. 4.

or if the amount or value of property stolen exceeds 300 rupees.

4174. Where the offence is accompanied with only trifling injury to the person, commitment is not requisite. *Reports L. P.* 1853, part 2, page 241.

Trifling injury does not necessitate commitment.

4175. The magistrate is also to exercise his discretion in committing for trial before the sessions court any persons charged with theft, although not attended with the aggravating circumstances above-mentioned, who from their notoriously bad character, or from their having been before convicted of a heinous offence, or from any other peculiar circumstances of the case, appear to him deserving of a severer punishment than the magistrate is authorized to inflict under the following clauses of this section. *Reg. XII.* 1818, sect. 3, cl. 2.

Cases which may be committed.

4176. A previous conviction of petty theft, not exceeding 10 rupees, when unattended with any aggravating circumstance, is not to be deemed a previous conviction of a heinous crime, such as precludes the magistrate's judicial cognizance of a charge of burglary or

Previous conviction of theft of 10 rupees not to be deemed previous conviction of a heinous crime.

theft, or of buying or receiving stolen property, and requires that the prisoner be committed for trial before the sessions court. (a) Reg. VI. 1824, sect. 5.

Magistrate may commit under any peculiar circumstances; but the express circumstances must be mentioned in his roobakaree of commitment.

4177. A magistrate is not bound to dispose of a case of theft, although within his competency, but may commit the offenders to take their trial before the sessions court under the above provisions, should any peculiar circumstances in the case induce him to consider this course of proceeding preferable; but in such case it is incumbent on him to state, in his roobakaree of commitment, the express circumstance or circumstances of aggravation, which have led him to commit the case, instead of disposing of it himself. The session judge is to furnish the same information in his abstract statement of sentences passed without reference. Const. No. 391, para. 5. C. O. No. 239 of vol. 1.

Judge how to proceed if no special grounds are recorded, or if he considers the commitment improper.

4178. In such case, where no special grounds are assigned in the roobakaree of commitment, or are shown on the proceedings to justify the commitment, the session judge is not competent to return the proceedings without trial, and to instruct the magistrate to dispose of the case; but he should call upon the magistrate to supply the omission, and in the event of insufficient ground for commitment being shown, he should, nevertheless, proceed to decide the case, contenting himself with recording, in his final proceeding or otherwise, a caution to the magistrate against making unnecessary commitments in future; and not exceeding (if the prisoner be convicted) that measure of punishment which it would have been competent to the magistrate to award, had he himself disposed of the case.* Const. No. 391, para. 6.

* See para. 1059.

Examples of magistrate's power to commit or pass sentence.

4179. On a second conviction of simple theft of property not exceeding 300 rupees,—the amount or value of property stolen in the first case being above 10 rupees, but not exceeding 300 rupees,—a magistrate is competent to pass sentence of punishment, provided that the amount of the latter theft does not exceed the sum of 300 rupees. Const. No. 419.

4180. A magistrate is competent to sentence a prisoner convicted of cattle stealing, who has been previously convicted of the same offence. Const. No. 1273.

4181. In a case of theft by servant of his master's property, the amount or value of which is above 50, but does not exceed 300 rupees, and which is unattended with personal violence or other circumstance of aggravation, such as to bring the case within cl. 2, sect. 3, Reg. XII. 1818 [*i. e.* cases which *must* be committed], the magistrate is competent to punish the offender on his own authority to the extent specified in cl. 4 of the section quoted. Const. No. 391, para. 4.

In all other cases the magistrate may not commit.

4182. With exception to the cases above-mentioned, the magistrates are to hear and determine, without reference to the sessions court, all other cases of theft, and after having duly considered the evidence which is adduced on the part of the prosecution and of the prisoner, are to pass sentence of acquittal or conviction. Reg. XII. 1818, sect. 3, cl. 3.

(a) There appears an ambiguity in the wording of this provision inasmuch as agreeably to the provisions of Reg. XII. 1818, a previous conviction of a heinous crime of whatever nature does not preclude the magistrate's judicial cognizance of a charge of simple theft not exceeding 300 rupees. Const. No. 419, para. 8.

4183. The declaration of the prosecutor on oath as to the value of property taken must be considered sufficient to determine in the first instance the tribunal by which the case should be tried ; provided of course that there is no reason to impugn the truth of it, on which point the magistrate is competent to make such enquiries as he thinks proper and to proceed accordingly. Const. No. 1030.

Rule for determining the value of the property stolen.

4184. But in a case where the alleged value of the stolen property is the only reason for the commitment of the prisoner, the magistrate is to put on record such proof as may show reasonable probability that the loss sustained by the prosecutor really amounts to the sum specified and charged in the indictment. C. O. No. 8, September 12, 1854.

So, where the amount of property is the only reason for commitment.

4185. In cases of theft cognizable by the magistrate under the foregoing rules, if the amount or value of the property stolen exceeds 50 rupees ; or if the persons committing the theft have been before convicted of theft, burglary, robbery, or other heinous offence ; or if the prisoner has committed the offence while employed in the office of watchman,^(a) guard, or police officer, as described in sect. 4, Reg. III. 1805 [see para. 4146] ; or is a servant of the person from whom the property has been stolen ; or a servant employed in the house in which the theft has been committed ; as well as in all cases of cattle stealing ; the magistrate is empowered, on proof of the guilt of the prisoner, to sentence him to imprisonment with hard labor for such period as appears proper, not exceeding 2 years, and to corporal punishment [commutable by cl. 2, sect. 2, Reg. II. 1834 to one year's additional imprisonment]. Reg. XII. 1818, sect. 3, cl. 4.

Magistrate's powers.

Penalty to be awarded by magistrate, if property stolen exceeds 50 rupees ; in case of previous conviction ; where the offender is a watchman or police officer ; or a servant of the person robbed ; or employed in the house robbed ; and in cases of cattle stealing.

4186. The term "cattle," as used above, must be held to include not only bullocks and buffaloes, but also horses, cows, sheep, goats, and donkeys. Const. No. 994.

Meaning of term "cattle."

4187. The rule in sect. 5, Reg. VI. 1824,* which declares a petty theft not exceeding 10 rupees not to be a heinous offence, applies only to the question of commitment ; and cannot be held to supersede that contained in the above provision, which authorizes a magistrate to pass sentence of two years' imprisonment and stripes on conviction of theft, where the offender has been before convicted of the same, whatever may be the amount taken in either^(b) case. Const. No. 488.

Punishment after previous conviction of theft not exceeding 10 rupees.

* v. para. 4175.

4188. A magistrate was informed that he was competent to inflict the full punishment of two years' imprisonment on a woman convicted of theft, on the ground of her having been twice before convicted, and appearing to be an incorrigible thief. Const. No. 468.

Case of incorrigible thief.

4189. When a prisoner was not a watchman at the time of committing the offence, the circumstance of his having been one formerly, or his being so denominated, is not to be regarded as a circumstance of aggravation under the above provisions. The magistrates are to state distinctly, in the column of remarks of the statements which they furnish of prisoners punished by them under Reg. XII. 1818, whether a prisoner whose pro-

It is no aggravation that the prisoner has been formerly employed as a watchman : the magistrate is to state whether he was so employed at the time of committing the offence.

(a) This applies to private watchmen, entertained by individuals, as well as to those in the public service : see para. 4240.

(b) This is not strictly correct ; for if the amount stolen in the case under trial exceeds 300 rupees, the magistrate is not competent to pass sentence, under sect. 4, Reg. IV. 1820. See para. 4172.

fession is that of gorait, dhanuk, or any other description of watchman, was, at the time of committing the offence of which he is convicted, actually employed in the capacity of guard or watchman, as described in sect. 4, Reg. III. 1805, or otherwise. C. O. No. 297 of vol. 1.

Unaggravated thefts punishable by imprisonment for 6 months ;

4190. In other cases of theft, not included in the foregoing provisions, the magistrate is either to refer the case for decision to his assistant, under the powers vested in the assistant to the magistrate by the regulations in force, or is to proceed to investigate them himself, and to pass sentence on the prisoners under the powers vested in him by sect. 19, Reg. IX. 1807 [i. e. imprisonment not exceeding 6 months and corporal punishment]. Reg. XII. 1818, sect. 3, cl. 5.

and for one year in addition in lieu of corporal punishment :

4191. A sentence of one year's imprisonment in lieu of corporal punishment, passed by a magistrate on a conviction of theft not exceeding 50 rupees in addition to imprisonment for 6 months, is not illegal under the wording of cl. 2, sect. 2, Reg. II. 1834. Const. No. 1183.

in unaggravated cases the sentence cannot be more severe

4192. A magistrate is not competent, in cases of theft, to pass sentence of imprisonment exceeding 6 months [and stripes], unless the theft has been attended by one or more of the six aggravating circumstances enumerated in cl. 4, sect. 3, Reg. XII. 1818. Const. No. 358.

If theft does not exceed 50 rupees, stripes may be awarded to an adult offender.

4193. It is competent to a magistrate, on conviction in cases of theft of property not exceeding in value the sum of fifty rupees, to sentence the prisoner convicted to corporal punishment not exceeding 30 stripes of a ratan.(a) Act III. 1844, sect. 1.

If the offender is of tender years, the punishment is to be by stripes not exceeding 10.

4194. It is competent to a magistrate, and he is hereby required, on conviction in cases of theft of property not exceeding in value the sum of fifty rupees, if the person convicted appears to him by inspection or other evidence to be of such tender years as to require punishment rather in the way of school discipline than of ordinary criminal justice, to sentence such person to corporal punishment with a light ratan not exceeding 10 stripes. Act III. 1844, sect. 2.

Under these provisions, if the offender is adult, the magistrate may punish by imprisonment or stripes; if of tender years, he must award stripes.

4195. By section 1 of these provisions, magistrates are declared *competent*, in certain cases, to inflict corporal punishment on adult offenders; and are at liberty, therefore, whenever they may deem such a course preferable, to sentence such offenders when convicted of theft of property not exceeding 50 rupees in value to the other penalties prescribed by pre-existing laws for that offence. Section 2, on the other hand, leaves no discretion whatever to the magistrate as regards juvenile offenders, imperatively enacting that he shall punish such, in cases of the nature under notice, rather in the way of school discipline than ordinary criminal justice, by sentencing them to undergo corporal punishment with a light ratan. C. O. No. 174 of vol. 3, para. 2.

The same rule applies to the case of a prisoner con-

4196. A question has arisen regarding the course to be pursued towards persons convicted a second time of theft of property not exceeding 50 rupees in value, whether

(a) This recurrence of the legislature to corporal punishment is declared to be merely temporary, "until adequate improvements in prison discipline can be effected."

corporal punishment should be repeated, or other regulations providing for such contingencies enforced. Referring to the above construction of Act III. 1844, which leaves the infliction of corporal punishment, or the imposition of other penalty on adult offenders, in cases falling under its provisions, discretionary with the magistrate on primary conviction, —the courts of nizamat adawlut have ruled, that, as regards those offenders, a similar discretionary power is vested in the magistrate relatively to secondary convictions; and further, in maintenance of the broad distinction between the cases of adult and juvenile offenders, they have determined that if a juvenile offender who has been once sentenced to corporal punishment be still, on the occasion of his re-apprehension and second conviction of theft of property not exceeding 50 rupees in value, of such tender years as to require, in the opinion of the magistrate, that he should be punished rather in the way of school discipline than ordinary criminal justice, it is incumbent on the magistrate to pass sentence of corporal punishment. C. O. No. 174 of vol. 3, para. 3.

victed of a second offence not exceeding 50 rupees, who has previously been punished by stripes.

4197. Attempts to commit theft do not fall under the provisions of Act III. 1844. C. O. No. 3 of vol. 4.

Attempts to commit petty thefts are not punishable by stripes.

4198. No female is to be subject to corporal punishment; and in cases of infliction of corporal punishment, no other punishment is to be superadded; and the punishment is to be inflicted on all occasions in the presence of the magistrate. Act III. 1844, sect. 3.

Conditions of sentence of corporal punishment

4199. Under the provisions of Act III. 1844, magistrates, joint magistrates, and persons lawfully exercising the powers of a magistrate, are alone competent to award corporal punishment; and the corporal punishment must be inflicted in the presence of such officers only. C. O. No. 174 of vol. 3, paras. 1 and 4.

Stripes can be awarded only by officers exercising the powers of a magistrate.

4200. Whenever a prisoner is charged before a magistrate or joint magistrate with two or more distinct offences, for neither of which he has been previously brought to trial; but for each of which he would be subjected, on conviction, to the penalties prescribed by cl. 4, sect. 3, Reg. XII. 1818 [*i. e.* in cases of theft attended with one of the aggravating circumstances which do not take the case out of the magistrate's competence]; the magistrate is to refrain from passing any sentence, until he has completed his proceedings in both cases. Reg. VI. 1824, sect. 2, cl. 1.

Where the prisoner is charged with 2 or more distinct offences, both aggravated, magistrate how to proceed;

4201. Should the prisoner be convicted of two or more of the offences charged, the magistrate is authorized to reduce the punishment so as not to exceed in the aggregate imprisonment for the term of two years and stripes [or one year's additional imprisonment], provided he is of opinion, on consideration of the several acts of criminality established against the prisoner and the circumstances of each case, that the punishment above specified is sufficient. Reg. VI. 1824, sect. 2, cl. 2.

and what amount of punishment he may award

4202. If, however, the magistrate is of opinion that the prisoner is deserving of a more severe punishment than that above specified, he is to refrain from passing any sentence, and is to commit the prisoner to take his trial before the sessions court for each offence. Reg. VI. 1824, sect. 2, cl. 3.

but he may commit if he thinks it necessary.

4203. The provisions of cl. 1, sect. 2, Reg. VI. 1824 are extended to cases in which a prisoner is charged before a magistrate or joint magistrate with two or more distinct

Where both the offences are

magistrate how to proceed ;

thefts, not being of the nature of those described in cls. 2 and 4, sect. 3, Reg. XII. 1818 [i. e. cases of theft which the magistrate must or may commit to the sessions, or attended with one of the circumstances which do not take the case out of the magistrate's competence ; —or in other words, cases of petty theft, in which the magistrate cannot award a higher sentence than imprisonment for six months and one year's additional imprisonment in lieu of stripes], for neither of which he has been previously brought to trial ; and those officers are to observe the course of proceeding laid down in the first quoted provisions in the trial of such cases. Reg. VI. 1829, sect. 2, cl. 1.

and what amount of punishment he may award :

4204. Should the accused be convicted of two or more of the offences charged, the magistrate or joint magistrate is authorized to pass a sentence upon the prisoner for any term of imprisonment not exceeding two years with labor, in addition to the corporal punishment [or additional imprisonment] which those officers are empowered to inflict under the regulations. Reg. VI. 1829, sect. 2, cl. 2.

but he may commit if he thinks the prisoner deserving of a more severe punishment.

4205. The magistrates and joint magistrates are empowered to commit, for trial before the sessions courts, any persons charged with two or more offences of the above description, whenever they are of opinion that there exist any circumstances of aggravation, such as to render the prisoner deserving of a more severe punishment than they are competent to inflict. Reg. VI. 1829, sect. 2, cl. 3.

Persons belonging to a wandering gang of thieves, how punishable.

4206. Whoever is proved to have belonged, either before or after the passing of this Act, to any wandering gang of persons associated for the purposes of theft or robbery, not being a gang of thugs or dacoits, is to be punished with imprisonment with hard labor for any term not exceeding seven years. Act XI. 1848, sect. 1.

4207. These provisions apply to cases of theft and burglary only. Reports *L. P.* 1852, part 1, page 893.

Such persons may be committed by any magistrate and tried by any sessions court.

4208. Any person accused of the offence of belonging to any such gang as aforesaid, or of the offence of unlawfully and knowingly receiving or buying property stolen or plundered by any such gang, may be committed by any magistrate within the territories of the East India Company, and may be tried by any court which would have been competent to try him if his offence had been committed within the zillah where that court sits. Act XI. 1848, sect. 2.

No futwa to be taken in such case.

4209. No court is, on the trial of any offence under this Act, to require any futwa from any law officer. Act XI. 1848, sect. 3.

Power of session judge.

4210. Persons committed by the magistrate under the above provisions, if convicted on trial before the sessions court, are liable to the penalties prescribed for the offences in question by cls. 2, 4, 5, and 7, sect. 8, Reg. XVII. 1817. Reg. XII. 1818, sect. 3, cl. 2.

Cases of robbery, burglary, or theft, attended with murder.

4211. Persons convicted of murder in prosecution of robbery, burglary, or theft, as in all other cases of wilful murder, are liable to a sentence of death by the nizamat adawlut under the laws and regulations in force which are applicable to such cases. Reg. XVII. 1817, sect. 8, cl. 2.

4212. In all cases of burglary and theft, or of theft without burglary, whether in a house or from the person of another, as well as in all cases of robbery, not within the provisions of the regulations in force for the punishment of robbery by open violence; if the robbery, burglary, or theft, or an attempt to commit the same be accompanied with an attempt to commit wilful murder, whether by wounding, burning, strangling, poisoning, drowning, throwing into a well, or by any other means; or be accompanied with wounding, burning, or corporal injury to any person or persons, in such degree as to endanger life; the offender or offenders who are convicted to the satisfaction of the nizamat adawlut of having been concerned, as principals or accomplices, in a robbery, burglary, or theft, or in an attempt to commit the same, attended with such aggravated criminality, are liable to the same punishment as that prescribed for robbery by open violence; viz. imprisonment and transportation for life.—The trial in all such cases is to be referred by the sessions court to the nizamat adawlut; and the session judge, before whom the trial is held, is to proceed as directed in sect. 4, Reg. VIII. 1808,* and other regulations in force, respecting prisoners who are liable to a sentence of imprisonment and transportation for life. If the session judge is of opinion that there are grounds for a mitigation of the prescribed punishment, he is to state the same for the consideration of the nizamat adawlut. Reg. XVII. 1817, sect. 8, cl. 4.

Cases of burglary, theft, or robbery, attended with attempt to murder, or corporal injury endangering life.

Such trials must be referred.

* v. para. 1139n.

4213. This provision is not applicable to a case in which death has ensued. Reports *W. P.* 1853, part 1, page 193. But if the violence used has not resulted in death, however clear may be the intention to kill, a capital sentence cannot be passed. Reports *J. P.* 1855, part 2, page 971.

Construction of preceding rules.

4214. A futwa convicting on strong presumption (*zann-i-ghalib* or *shubha-i-kawi*) is a futwa of conviction; and a session judge concurring in such conviction in a case of burglary or theft attended with murder, or wounding or corporal injury endangering life, must proceed, as prescribed above, to pass sentence of imprisonment and transportation for life, and refer the trial for the final orders of the nizamat adawlut, suspending the issue of his warrant for execution of his sentence until the final orders of that court be received. Const. No. 558, para. 2.

In such cases, if the futwa convicts, even on presumption, the judge must pass the prescribed sentence, and refer the trial.

4215. Where the prisoners, in a case of burglary and theft, took the prosecutor's child, aged about one year, from its bed and left it in the adjoining garden, it was held to be a case of burglary attended with corporal injury in such a degree as to endanger life, and as such necessarily referrible to the nizamat adawlut under the above provisions. N. A. R. vol. 4, page 284.

Example of such case.

4216. All cases of administering *poisonous* drugs to persons, with a view to robbing them while in a state of insensibility, come within the provisions of cl. 4, sect. 8, Reg. XVII. 1817; and the session judge must pass sentence of imprisonment in transportation for life, and refer the case, if the prisoners are convicted, for the final sentence of the nizamat adawlut, whether death ensues or otherwise. C. O. No. 291 of vol. 1. Const. No. 365. N. A. R. vol. 3, page 333.

All cases of administering *poisonous* drugs with intent to rob come within the above provisions;

and may be tried by the thuggee judge.

4217. As thuggee officers are vested with magisterial powers with respect to the specific crimes of thuggee and poisoning, so persons committed on a charge of poisoning may be tried by the session judge specially appointed for the trial of thugs. Const. No. 1107.

If persons accused of robbery and murder appear to have been engaged in a systematic combination for such purposes, they are to be made over to the thuggee officers.

4218. Persons accused of robbery and murder, or of either of those crimes, under circumstances justifying a suspicion that the crimes have been perpetrated by persons engaged in a systematic combination for such purposes, are to be made over to the assistant to the general superintendent for the suppression of thuggee, who will commit the persons so transferred to be tried before the special session judge for the trial of thugs, and will make investigations as to the existence of combinations of the kind described with a view to the suppression of the offences to which they give rise. [This order was circulated in the Behar districts only, but appears applicable to all the provinces.](a) C. O. No. 92 of vol. 3. *L. P.*

Cases of administering *intoxicating* drugs with intent to rob do not come within the above provision.

4219. The above rule is applicable only to the crime of administering *poisonous* drugs to persons, with a view to robbing them when in a state of insensibility; and does not include the offence of administering drugs and substances of a merely *intoxicating* character, and not of a nature to endanger life, for the purpose recited; consequently those cases only are referrible to the nizamat adawlut, in which the prisoners are accused and convicted of having administered *poisonous* drugs. C. O. No. 64 of vol. 3. N. A. R. vol. 5, page 121.

Form of indictment for administering poisonous or intoxicating drugs with intent to rob.

4220. In such cases an indictment is defective, if the name only of the drug used be given, and its designation of poison be not specifically adduced. Such indictments therefore are to be worded simply "administering poison or poisonous drugs with intent," &c., or "administering intoxicating drugs with intent," &c. (according as either of the above

(a) The following extract from a letter of the superintendent of police was annexed to the above order: "I have no doubt however but what a combination exists along the lines of road frequented by travellers, pilgrims, &c., for robbery by this atrocious method; and that the dāk bearers, petty modis at the halting places, bhataras and common thieves, are concerned in it. I also think that it is carried on to a greater extent than is officially known, or generally suspected; and that many of the travellers, whose corpses, at the times of pilgrimage to Gyah or Hurri Chetra, are found by the roadside or at halting places, have met with their deaths from such means. The roads are so inadequately protected without any patrol, that there is always an opportunity for such a crime almost without a chance of discovery." The same officer has also recorded the following remarks: "The crime of theft by administering stupifying drugs is becoming, I am sorry to observe, common in these provinces, and Major Sleeman reports the same in that part of the country over which he has the chief police charge. It is safer than common theft, as the mithaiwala has time to get off; and it is only from accidental circumstances that any clue is found or the party apprehended. The drugs administered are all stupifying; if the dose taken is large, they cause death; if small stupefaction, not in my opinion intoxication. The mithaiwala mixes the drug by chance, and leaves his victim to recover or die, as the chance may be; and I think a heavier punishment than six or seven years' imprisonment should always be given to this class of offenders; and I would never give less than imprisonment for life, as such men should (like the thugs) not be allowed again to be at large to the injury of the community. That death does not ensue in every case is not the fault of the mithaiwalas administering the drug in food or water; it arises from the merest chance, whether the stomach of the receiver is full or empty, the victim robust or weak, or the quantity of mixed food swallowed before the effect of the drug appears; and it is, I think, a mistake to charge this class of miscreants with administering *intoxicating* drugs where the parties recover, when they are always *poisonous* drugs dependent for their final effect on the quantity which the victim may swallow, or other circumstances, not on any designed will of the administerer." *Police Report of Sup. Pol. L. P. for the first six months of 1841, para. 123.*

rules applies to the case), the article given, whether dhutoora or other substance, being adduced in the evidence in support of the charge. C. O. No. 83 of vol. 3.

4221. The provisions of cl. 5, sect. 8, Reg. XVII. 1817 are not applicable to cases of “administering intoxicating drugs and theft.” Const. No. 1324.

The following rule does not apply if the drugs are only intoxicating.

4222. In cases of conviction before the sessions courts of any offences specified in the preceding clause, wherein the robbery, burglary, or theft, or an attempt to commit the same, has not been accompanied with an attempt to commit murder; nor with wounding, burning, or other corporal injury, in such degree as to endanger life; but has been attended with wounding, or other corporal injury, in a less degree, the session judge, provided he concurs in the conviction of the offender, is without reference to the nizamat adawlut to adjudge him to suffer such punishment, as appears adequate to the offence, not exceeding the sentence which the sessions courts are authorized to pass in cases of burglary by cl. 1, sect. 3, Reg. I. 1811; viz. stripes [now commutable to two years’ additional imprisonment] and imprisonment for 14 years in banishment from the district where the prisoner has resided. Reg. XVII. 1817, sect. 8, cl. 5.

Cases of robbery, burglary, or theft, attended with corporal injury not endangering life.

4223. Nothing in the above clause is to be construed to authorize an enhancement of the penalties declared by the regulations in force for burglary, or theft, when not accompanied with wounding, or other corporal injury, nor with an attempt to commit murder by strangling, or other means, as described in cl. 4 of this section. Reg. XVII. 1817, sect. 8, cl. 6.

Restriction of the above rule.

4224. No part of the preceding section [which contains the penalties prescribed for the offence of gang-robbery] is to be considered applicable to secret theft, or larceny without open violence (*sarika-i-sughra*), whether accompanied with burglary (*nakh-zani*), or simple theft from the person or house, unaccompanied with any aggravating circumstance. In such cases the Mahomedan law, with the modifications of it in existing regulations, and the rules contained in sect. 2 of this regulation*, when the prisoner is declared liable to discretionary punishment, is to govern the sentences of the sessions courts; as well as of the nizamat adawlut in any cases referred to that court. Reg. LIII. 1803, sect. 5, cl. 1.

Provisions regarding robbery by open violence, are not applicable to other cases of theft or robbery without violence. Rules for guidance of courts in such cases.

* v. para. 1307 et seq.

4225. It is hereby declared, in explanation of the above provision, that the reference therein made to the Mahomedan law in cases of theft was not intended, and is not to be considered, to preclude the sessions courts from adjudging stripes [now commutable to two years’ additional imprisonment] in addition to imprisonment not exceeding seven years, when such punishment in aggravated cases of theft appears just and proper. Reg. XVII. 1817, sect. 8, cl. 7.

Explanation of the above provision.

4226. The explanation contained in the two clauses of sect. 5, Reg. LIII. 1803, (a) respecting the distinction to be observed in cases of secret theft, or larceny without open

Punishment of watchmen or police

(a) One of these clauses is given above; the other declared murder, wounding, or other personal injury, and any other criminal acts of violence, done in prosecution of an original intention to commit theft, liable to the same punishment, as is specified in the preceding section, for the same acts of criminality committed in prosecution of robbery by open violence. Clause 2 is repealed by Reg. XVII. 1817, and the provisions given above enacted in its stead.

officers convicted of theft.

* *v. para.* 4146.

† That is, private watchmen entertained by individuals, as well as those in the service of government; see *para.* 3139.

‡ *r. para.* 1314.

|| *r. para.* 1435.

violence, and of criminal acts of violence done in prosecution of the original intention to commit theft, is to be applied in like manner to the several provisions contained in the present regulation [*i. e.* for the punishment of police officers or watchmen being accomplices in or conniving at robbery by open violence*]. But if any police officer or any guard, or watchman, bound to assist the officers of police,† as described in sect. 4 of this regulation, is convicted of theft, though without any act of violence, or of clear and direct connivance at the perpetration of such crime, he is liable to suffer such aggravation of punishment as the sessions court, before whom he is convicted, or the nizamat adawlut if the case is referrible to that court, deem adequate to his offence, not exceeding the limitations prescribed by cl. 7 sect. 2‡, and cl. 3 sect. 7||, Reg. LIII. 1803, for cases not specifically provided for by the regulations, or by any stated penalty in the Mahomedan law. Reg. III. 1805, sect. 6.

Judge to explain in the abstract statement, if the sentence awarded exceeds imprisonment for 4 years with stripes. But this does not fix a maximum sentence for unaggravated cases.

4227. With a view to enable the nizamat adawlut to judge, from the abstract statements of prisoners punished without reference, of the fitness of the sentences passed in cases of burglary, theft attended with personal injury, and the knowing receipt of property acquired by theft or robbery; the session judges are required, whenever by reason of circumstances of aggravation a sentence of severity (exceeding 4 years' imprisonment with stripes) is passed, to insert under the column of remarks a brief explanation showing what those circumstances of aggravation are. But this order is not intended to fix a maximum of punishment in unaggravated cases, and is not to be construed as such: nor is it to supersede the necessity of furnishing brief explanations, showing the nature of each case, in the column appropriated for that purpose.* C. O. Nos. 216 and 275 of vol. 1.

* *v. para.* 4177.

Precedents.

Theft attended with murder;

4228. Where the prisoner was convicted of being an accomplice in theft attended with murder, the deceased having held him by the hair until apprehended, he was sentenced to death, though it appeared that he was unarmed, and that his accomplices had given the fatal wounds; *N. A. R. vol. 1, page 312*. Where the prisoner went to commit theft armed with an axe, and when detected and pursued and struck at by the owner of the house with a view to his apprehension, he turned round and killed by a blow from behind the owner, who seeing the axe had fled from it, he was sentenced to death. *Reports L. P. 1852, part 1, page 135*. Where two prisoners were convicted, on their own confessions and by circumstantial evidence, of being accomplices in a murder in prosecution of theft, they were sentenced to imprisonment for life; another prisoner, who had been improperly admitted by the commissioner to give evidence as an approver, was ordered to be re-committed, and afterwards sentenced to the same punishment; and a fourth prisoner was acquitted of the charge of murder, but ordered to be committed for knowingly receiving part of the stolen property, and was afterwards sentenced by the commissioner without reference to imprisonment for 10 years; *N. A. R. vol. 4, page 32*. Where the prisoners were convicted on violent presumption of the murder of travellers for the sake of their property, they were sentenced to imprisonment for life in Alipore jail; *N. A. R. vol. 3, page 349*: in a similar case a capital sentence was not passed, because one of the judges of the court considered the evidence to be insufficient to warrant their being

convicted of the capital offence, and they were sentenced to imprisonment for life ; *N. A. R. vol. 4, page 183*. A prisoner, aged 16 years, convicted of theft attended, though without his privity or intent, with murder, was sentenced, in consideration of his youth and all the circumstances of the case, to stripes and imprisonment for 7 years ; *N. A. R. vol. 2, page 331*. Where the prisoner was convicted of stealing the ornaments from a child, attended with accidental wounding, he was sentenced to imprisonment for 7 years ; *N. A. R. vol. 4, page 193*.

with accidental wounding.

4229. Where the prisoner, residing in the same house with his step-mother, broke open a locked chamber belonging to the latter, during her absence, and carried off certain property which on the trial he claimed as his own, he was convicted of theft and sentenced to imprisonment for 2 years ; *N. A. R. vol. 5, page 93*. A prisoner, convicted of stealing from his master money and effects to the value of 1500 rupees, was sentenced by the session judge to stripes, tusheer, and imprisonment for 5 years ; under the provisions then in force, the sentence should have been imprisonment for 7 years, and the tusheer was unauthorized ; as, however, the court presumed the corporal punishment and tusheer to have been already inflicted, they did not interfere with the sentence ; *N. A. R. vol. 1, page 223*. A prisoner convicted of theft of property belonging to his employer, was sentenced to imprisonment for 5 years ; and another convicted of knowingly receiving the stolen property, for 2 years ; *N. A. R. vol. 5, page 165*. Where the crew of a stranded vessel broke open a box of a passenger and appropriated its contents, they were convicted of theft, and sentenced to imprisonment for 3 years ; *N. A. R. vol. 5, page 180*. Where a prisoner was acquitted of theft, notwithstanding his foudaree confession, as there was strong reason for believing that the charge of theft had been got up with a view to bring disgrace upon the party at whose instigation the theft was said to have been committed, the recovered property was left at the disposal of the magistrate ; *N. A. R. vol. 3, page 263*. A woman convicted of the “unauthorized taking” [or theft] of the ornaments from a corpse which she found* floating in a tank, and which she endeavoured to hide, was sentenced to imprisonment for one year. *Reports L. P. 1852, part 1, page 460*.

Theft by a relation :

by a servant .

by the crew of stranded vessel :

acquittal, and disposal of property.

* *Trove property. See para. 1680.*

4230. In cases of highway robbery not amounting to robbery by open violence ; where the prisoner was the last person seen in the company of a missing woman, and subsequently pawned her necklace and ear-rings as the property of his wife, and these facts combined with other circumstances warranted a violent presumption that he had robbed and made away with the missing woman, and left no reasonable doubt of his having destroyed her, he was sentenced to imprisonment for life ; *N. A. R. vol. 4, page 164*. Where the robbery was accompanied with wounding and intent to kill, the prisoner was sentenced to stripes and transportation for life ; *N. A. R. vol. 2, page 77* ; and in a similar case to imprisonment for life in the Alipore jail ; *N. A. R. vol. 5, page 54* ; and where the prisoner was convicted of robbing his fellow mendicant, an old woman, in the jungle, after beating her with intent to kill, and leaving her there for dead, he was sentenced to imprisonment for 21 years in the Alipore jail ; *N. A. R. vol. 2, page 219*. On conviction of attempt to murder with intent to commit robbery, the prisoner was

Highway robbery not amounting to robbery by open violence ; attended with murder ;

with intent to kill ;

sentenced to imprisonment for life ; *N. A. R. vol. 2, page 264* :—where the prisoners were charged with administering a deleterious drug to some travellers in food, from eating which death ensued, and with robbing them while insensible from the effects of the poison ; the nizamat adawlut were not satisfied with the evidence to the alleged murders, and convicting the prisoners of having been concerned in highway robbery only, sentenced them to stripes and transportation for life ; *N. A. R. vol. 1, page 320*. Where a prisoner, alone and unarmed, was convicted of highway robbery accompanied with only slight personal violence, he was sentenced to imprisonment for seven years ; *N. A. R. vol. 2, pages 23 and 53* ; and, in another case, to stripes and imprisonment for five years ; *N. A. R. vol. 2, page 172*. A prisoner convicted of suddenly snatching a necklace from a boy on the highway, without previous intimidation or act of violence, was sentenced to imprisonment for three years ; *N. A. R. vol. 1, page 269*.

with personal violence ;

without aggravation.

Administering poisonous or deleterious drugs in prosecution of theft ; death ensuing ;

death not ensuing.

4231. In cases of administering poisonous or deleterious drugs in prosecution of theft where death ensued and the prisoner buried the body in her own house, she was sentenced to death ; *N. A. R. vol. 1, page 137* :—but where, although death ensued, it appeared that the intention of the prisoners was rather to produce a temporary state of insensibility than to cause death, they have been sentenced to imprisonment for life ; *N. A. R. vol. 1, pages 149, 216, 229 ; vol. 3, page 227 ; and vol. 4, page 105*. In cases in which death has not ensued,—where the prisoner was convicted in two cases of administering the seeds of dhutoora, and stealing the property while the owners were in a state of insensibility induced thereby, and she was an old offender, she was sentenced to imprisonment for life ; *N. A. R. vol. 1, page 368* :—and in a similar case, where the prisoner was convicted in three separate instances, he was sentenced to stripes and imprisonment for life in Ali-pore jail ; *N. A. R. vol. 2, page 140*. And when the prisoner admitted that he had for twenty years been making his livelihood by such practices, he was sentenced to transportation for life ; *N. A. R. vol. 6, page 201*. On conviction of a single offence, the sentence has been for stripes and imprisonment for 14 years ; *N. A. R. vol. 3, page 333 ; and vol. 4, page 217* :—and where the robbery was not effected, the prisoner has been sentenced to imprisonment for eight years ; *N. A. R. vol. 2, page 359* :—and for seven years ; *N. A. R. vol. 3, page 21*.

SECTION IV.

OF BURGLARY.

Definitions.

What constitutes the offence of burglary.

4232. The magistrates are to be guided by the following rules, whenever individuals are apprehended and brought before them on a charge of having committed the offence of breaking into, or attempting to break into, a dwelling house, tent, boat, or other place of habitation, by night or by day, with an intent to steal (but without open violence, such as to constitute the crime of robbery by open violence) ; or with the offence of breaking into,

or attempting to break into, any ware-house, store-house, or other building or place used for the custody or preservation of property, either by night or by day, with intent to steal (but without open violence); or of being present aiding and abetting in the commission of any of the offences above specified; or although not present of having procured or caused the perpetration of any of those offences by hire, counsel, or command, or of having in any manner confederated with the actual perpetrators of them in pursuance of a preconcerted plan. Reg. XII. 1818, sect. 2, cl. 1.

4233. The entering into a dwelling-house with intent to rob by lifting a door off its hinges, is burglary; as is also an entry by lifting the straw-thatch, after loosening the strings or fastenings: but entering a door left open, or climbing over an outer wall, unless followed by a burglarious entry into the house, does not amount to burglary. *N. A. R. vol. 1, page 270.*

Mode of entry.

4234. In cases of burglary, it is immaterial whether the offence has been committed by day or by night; but the magistrate should take into consideration the time when the act was committed as one among the circumstances of the case, which are to guide his judgment in apportioning the degree of punishment suited to the offence. Const. No. 299.

Immaterial, whether the offence is by day or by night.

4235. In trials for burglary attended with violence, it should always be specified in the charge, whether the violence was simultaneous with or subsequent to the entry, as in the former case the crime is dacoity. *N. A. R. vol. 3, page 271.*

Distinction between burglary and dacoity.

4236. If the perpetration of any of the offences enumerated in the preceding clause not amounting to the crime of robbery by open violence, is accompanied with murder, or with an attempt to commit murder, or with wounding, burning, corporal injury, or other aggravating act of personal violence; or if the prisoners, or any of the prisoners concerned in the offences described in the preceding clause, appear to have been before convicted of burglary, robbery, or other heinous crime; or if the prisoners or any of them appear to be persons of notoriously bad character, or are charged with having committed the offence while employed in the office of watchman, guards, or police officers, as described in sect. 4, Reg. III. 1805*; or if the value or amount of the property stolen exceeds the sum of 100 rupees†; in all such cases it is the duty of the magistrate to commit the whole of the prisoners, who appear from the evidence adduced to have been concerned in the offence, to take their trial before the sessions court. Reg. XII. 1818, sect. 2, cl. 2.

Commitment and penalties.

Cases which must be committed.

* *v. para.* 4146.

† *v. paras.* 4183 and 4184.

4237. A previous conviction of petty theft, not exceeding ten rupees, when unattended with any aggravating circumstance, is not to be deemed a previous conviction of a heinous crime, such as precludes the magistrate's judicial cognizance of a charge of burglary, and requires that the prisoner be committed for trial before the sessions court. Reg. VI. 1824, sect. 5.

Previous conviction of theft of 10 rupees is not a conviction of a heinous offence.

4238. This refers only to offences against property, and does not include, under the term "before convicted, &c." a conviction for offences of a class and nature entirely different from those for the punishment of which this regulation provides. Thus, a previous conviction for culpable homicide does not necessitate commitment. Reports *L. P.* 1854, part 1, page 28.

Previous offence must be of the same or similar nature.

If the burglary is perpetrated by a police officer, or watchman, even of another village, the case must be committed.

4239. Under the terms of the above provision, any person charged with having committed the offence of burglary, while employed in the office of watchman, guard, or police officer, against whom there appears sufficient evidence, must be committed to the sessions: and the fact of his being the chokeedar of a different village from that in which the burglary was committed, is immaterial as regards the commitment; though it would be considered in passing sentence, as it is unquestionably an additional aggravation that the property stolen was under the special protection of the thief. Const. No. 374.

and this applies to private watchmen entertained by individuals as well as to those in the public service.

4240. Under the terms of cl. 6, sect. 11, Reg. XIV. 1807 [*para.* 2010] and cl. 9, sect. 21, Reg. XX. 1817 [*para.* 2179], "private watchmen, entertained by individuals for guarding their houses, shops, or other premises" within the towns or villages, where the darogahs of police or officers of outposts are stationed, and within the kotwali jurisdiction, are to be considered subject to the orders of the police officers, and are required to act in concert with them. And by cl. 4, sect. 12, Reg. XIV. 1807 the provisions of cl. 6, sect. 11 of the same regulation are declared applicable to all such private watchmen within the towns, gunjes, or other places forming part of any mofussil police jurisdiction. It follows therefore, that private watchmen, of whatever denomination and by whomsoever entertained, are "required by the regulations to assist the police officers in preventing robbery or other crimes and in apprehending offenders;" and that being thus in the same category with the chokeedars and others, described in sect. 4, Reg. III. 1805†, they come within the intent and meaning of the rule contained in cl. 2, sect. 2, Reg. XII. 1818, and must be committed to the sessions court if implicated in a burglary. C. O. No. 5 of vol. 4.

†, *para.* 4146.

Previous conviction of cattle stealing necessitates commitment.

4241. A magistrate is not competent to pass sentence on a prisoner convicted of burglary, who has been previously convicted of cattle stealing; but must commit the case to the sessions. Const. No. 1273.

Cases which may be committed.

4242. In modification of cl. 2, sect. 2, Reg. XII. 1818, the magistrates are hereby declared to be empowered to commit for trial to the sessions court any person charged with the offence of burglary, whenever they are of opinion, that there exist any circumstances of aggravation (though not of the nature specified in the clause above quoted) such as to render the prisoner deserving of a more severe punishment than the magistrates are competent to inflict. Reg. VI. 1824, sect. 3.

Magistrate may commit under any peculiar circumstances; but those circumstances must be stated: and the judge also is to note them in his abstract statement.

4243. A magistrate is not bound to dispose of a case of burglary, although within his competency; but may commit the offenders to take their trial before the sessions court, should any peculiar circumstances in the case induce him to consider this course of proceeding preferable: but in such case it is incumbent on him to state, in his roobakaree of commitment, the express circumstances of aggravation, which have led him to commit the case, instead of disposing of it himself. The session judge is to furnish the same information in the abstract statement of sentences passed without reference. Const. No. 391, *para.* 5. C. O. No. 239 of vol. 1.

Judge how to proceed if the magistrate makes an

4244. In the event of a commitment being made by a magistrate, by error or negligence, in a case which, under the above provisions, he might have disposed of himself, the

session judge should try and decide the case, not exceeding (if the prisoner be convicted) that measure of punishment which it would have been competent to the magistrate to award, had he himself disposed of the case; and reporting (where he sees sufficient ground) the magistrate's mode of proceeding to the nizamut adawlut for their orders, or contenting himself with recording in his final proceeding or otherwise a caution to the magistrate against making unnecessary commitments in future.* Const. No. 301, and No. 391 para. 6.

unnecessary commitment.

* But see para. 1059.

4245. If from the investigation held by the magistrate there appears reason to believe that a prisoner apprehended and brought before him has been guilty of any of the offences described in the first clause of this section, but that such offence has not been attended with any of the circumstances of aggravation specified in the second clause of this section, the magistrate is, in addition to the evidence which is adduced on the part of the prosecution, to take the defence of the prisoners and the evidence of the witnesses who are designated by the prisoners in support of their defence; and after a full and deliberate investigation is to proceed, without reference to the sessions court, to pass sentence of acquittal or conviction. Reg. XII. 1818, sect. 2, cl. 4.

Magistrate how to proceed if he considers it unnecessary to commit the case.

4246. If the prisoners are convicted, the magistrate is empowered to sentence them to imprisonment with hard labor for a period not exceeding 2 years, and to corporal punishment [now commutable to additional imprisonment for one year], and to carry such sentence into immediate execution. Reg. XII. 1818, sect. 2, cl. 5.

Power of magistrate.

4247. Any person upon whom the instrument denominated a *sindh-kati*, used for the known purpose of *nakhzani*, is found, is to be detained by the magistrate in safe custody, and employed to work on the public roads until he gives security for his future good conduct, or until the session judge (before whom the magistrate is to lay his proceedings) on revision of those proceedings, directs the discharge of the prisoner on a muchalka. Reg. I. 1811, sect. 6.

Persons found with a *sindh-kati* to be required to give security.

4248. Whenever a prisoner is charged before a magistrate or joint magistrate with two or more distinct offences, for neither of which he has been previously brought to trial, but for each of which he would be subjected on conviction to the penalty prescribed by cl. 5, sect. 2, Reg. XII. 1818, the magistrate is to refrain from passing any sentence until he has completed his proceedings in both cases. Reg. VI. 1824, sect. 2, cl. 1.

Magistrate how to proceed if prisoner is charged with two distinct offences;

4249. Should the prisoner be convicted of two or more of the offences charged, the magistrate is authorized to reduce the punishment so as not to exceed in the aggregate stripes [now commutable to additional imprisonment for one year] and imprisonment for the term of two years, provided he is of opinion, on consideration of the several acts of criminality established against the prisoner and the circumstances of each case, that the punishment above specified is sufficient. Reg. VI. 1824, sect. 2, cl. 2.

and what amount of punishment he may award:

4250. If however the magistrate is of opinion, that the prisoner is deserving of a more severe punishment than that above specified, he is to refrain from passing any sentence, and is to commit the prisoner to take his trial before the sessions court for each offence. Reg. VI. 1824, sect. 2, cl. 3.

but he may commit if he thinks it necessary.

Power of session judge.

* See paras. 4211 et seq.

The rules regarding the power of the session judge in cases of theft apply equally in cases of burglary.

There is no minimum of sentence prescribed to the session judge.

If the burglary is attended with murder, sentence of death may be passed.

Precedents.

Attended with murder;

with wounding which proved fatal;

with violence endangering life;

with wounding;

4251. In cases of conviction before the sessions court of individuals charged with any of the offences specified in cl. 2 of this section, the session judge is to be guided by the rules contained in sect. 8, Reg. XVII. 1817*; referring such cases, as come within the provisions of cl. 2 and cl. 4 of that section, to the nizamat adawlut; and in all other cases, not coming within the provisions of those clauses, sentencing the prisoners to suffer such degree of punishment, as on a consideration of all the circumstances of the case appears adequate to the offence, not exceeding however in any instance stripes [now commutable to 2 years' additional imprisonment] and imprisonment with hard labor for 14 years, with or without banishment from the district in which the prisoner has resided. Reg. XII. 1818, sect. 2, cl. 3.

4252. Under the discretion vested in the sessions courts by the above provisions, those courts may mitigate the punishment to below three years' imprisonment, and to such degree as they judge proper. Const. No. 299 para. 3.(a)

4253. Should any person, in the commission of, or in the attempt to commit, any species of burglary as described above, kill another, the offender is to be adjudged to suffer death, as well as all persons found guilty of aiding and abetting therein. Reg. I. 1811, sect. 3, cl. 4; and sect 4.

4254. Where the prisoner has committed murder in the prosecution of burglary, he has been sentenced to death; and in one case an accomplice in the burglary who was not actively concerned in the murder was sentenced to imprisonment for 14 years: *N. A. R. vol. 1, page 7; vol. 4, page 277; and vol. 5, page 23.*—Where three persons were concerned in a burglary attended with wounding which proved fatal, the one who stood by while the burglary was committed, and afterwards inflicted the fatal wounds, was sentenced to imprisonment for life in Alipore jail; the second, who actually committed the burglary, but ran off before the wounds were given, was sentenced to imprisonment for 14 years; and the third, who also stood by during the commission of the burglary and then ran off before the wounds were given, to imprisonment for 7 years; capital punishment was remitted “under all the circumstances of the case,” but the motive for leniency may perhaps have been that the wounds were inflicted in return for blows and in a struggle between the deceased and the prisoner, and that they did not show an intent to kill; *N. A. R. vol. 4, page 87.* Where a prisoner in committing a burglary took the prosecutor's child out of his house, and after stripping it of its ornaments left it in a garden adjoining, and thereby endangered its life, he was sentenced to imprisonment for 10 years; another prisoner, convicted of knowingly receiving part of the stolen property, to 7 years' imprisonment; and a third convicted of privity to the theft to imprisonment for 3 years; *N. A. R. vol. 4, page 284.* Where the two prisoners were discovered in the act of undermining the wall of a dwelling house, and one of them wounded with a sword one of the persons who apprehended them, they were sentenced to stripes and imprisonment in banishment for 14 years;

(a) This construction also declares that the provisions contained in cls. 1, 2, and 3, sect. 8, Reg. I. 1811, and in cls. 2, 3, 4, and 5, sect. 2, Reg. XI. 1814 (for the punishment of cases of burglary) are virtually superseded by the provisions of Reg. XII. 1818.

N. A. R. vol. 1, page 243. Before the enactment of Reg. XVII. 1817, and Reg. XII. 1818 unaggravated cases of burglary were punished with stripes and imprisonment for 14 years; *N. A. R. vol. 1, pages 250, 255, and 262*:—and where three prisoners broke into a cow-house at night and carried off the cattle therefrom, they were sentenced to stripes and imprisonment for 7 years; *N. A. R. vol. 1, page 286.* A chokeedar, convicted of burglary in a mahalla other than his own, was sentenced to stripes and imprisonment for 4 years; *N. A. R. vol. 4, page 194.* Where a prisoner was convicted of burglary and intent to steal unaccompanied with any aggravating circumstances, and sentenced by the judge of circuit in consideration of his notoriously bad character to stripes and imprisonment in banishment for 14 years, the nizamat adawlut reduced the term to 7 years, as it did not appear that the prisoner though of bad character had ever before been convicted of a specific offence; *N. A. R. vol. 2, page 400.* A prisoner convicted of being an accomplice in an attempt to commit burglary was sentenced, as a hardened offender, to stripes and imprisonment for 5 years; *N. A. R. vol. 4, page 107.*

unaggravated.

Case of a chokeedar.

Prisoners notorious offenders.

SECTION V.

OF THE MAHOMEDAN LAW OF SARIKA.(a)

4255. The legal meaning of sarika is defined to be, a sane and adult person wrongfully and furtively taking the undoubted property of another, such property being in due custody and of the value of not less than ten dirms (or rather more than three rupees). The furtive or clandestine taking, in cases of highway robbery, is explained to refer to the imam, or chief magistrate, whose province it is to guard the highways by means of his assistants; in cases of private larceny, it respects the individual proprietor or his representative. When the offence is committed at night, it is sufficient to constitute larceny, that it was commenced secretly,—as where the thieves, having effected a secret entrance into a house, carry off the property by open violence,—because at such a time it is difficult to obtain assistance; but in the day-time, when aid is readily procured, the secrecy must be continued throughout, and it is not larceny, if property obtained furtively is openly taken away. The custody requisite to constitute the crime is of two kinds,—of place,—and of person. Custody of place (*hirz bil makam*) is when the property is in a house, or other receptacle generally used for preserving property; and there must be a taking away from such place. Custody of person (*hirz bil hafiz*) is when the property is within sight of the possessor, whether on a road or plain, and whether the keeper be asleep or awake: the crime is complete, if the property be seized by the robber, though it be not carried away;

Definition of the term.

Furtive taking.

If by night, the offence must have commenced secretly; if by day, the secrecy must be continued throughout.

The requisite custody is of two kinds,—of place,—and of person.

(a) I am indebted for nearly the whole of this section on Mahomedan law to Mr. Harington's Analysis, vol. 1, pages 273 *et seq.*

and the personal custody is perfect, whether the possession of the property by the holder be absolute and permanent, or delegated and temporary.

The object which the Mahomedan law has in view.

4256. In cases of robbery, the Mahomedan law has two objects in view—one, the punishment of the offender, which is so severe that every facility is afforded to avoid its infliction; the other, the restoration of the property, to effect which various provisions of the law directly tend, and which does not take place if the prescribed punishment be inflicted.

Charge may be established by confession, or evidence.

4257. A charge of theft may be established by confession, or by the testimony of two male witnesses; but the kazee may advise the thief not to confess. If a confession be retracted, the infliction of specific punishment is stayed; but it does not prevent the restoration of the property. A confession of theft committed on an unknown person is insufficient for conviction. Where several persons confess to a joint theft, and half of them retract, the remainder cannot be convicted on their confession alone. And conviction cannot be had upon a confession of stealing property, part of which is declared by the person robbed to belong to the thief. The absence of accomplices indicated by the prisoner confessing is not sufficient to bar conviction. Where the evidence is insufficient for conviction, and the accused denies the charge, he may be required to exculpate himself on oath; and, if he refuses to do so, may be made answerable for the property stolen, but is liable to no further punishment. It seems doubtful whether the imam may chastise an accused person, whom he suspects of having the stolen property in his possession, in order to compel the restitution of it. The kazee is directed to be particular in his examination of the witnesses, as to time, place, and circumstances; as well as respecting the value of the property stolen, if it be not produced in court; and he is enjoined to ascertain their credit, if it appear doubtful. If the accused is a Mahomedan, the witnesses to prove the charge against him must be of the same persuasion; and if two infidels depose to a theft jointly committed by a Mahomedan and an infidel, their evidence is insufficient to convict either. If two witnesses accuse one person of theft, and two more depose to its commission by another person, neither can be convicted on their evidence, though the party robbed should charge one of them. A parole confession made before private individuals is insufficient, if the accused does not admit it. Nor is it sufficient, unless the confession expressly declares that the property was stolen: and both the prosecutor and witnesses are permitted to use terms in their depositions, which may secure the right of property to the owner without subjecting the party accused to the punishment of theft; the reason of which is that a prisoner, who has suffered the prescribed punishment, cannot be called upon to restore the stolen property.—The legal penalty for a first offence is amputation* of the right hand; for a second offence, amputation of the left foot: if the crime is further repeated, the criminal may be imprisoned until he repent, or for life; or, in cases requiring exemplary punishment, he may be put to death.

If there is neither confession, nor evidence, the accused may be required to exculpate himself on oath.

Rules for taking evidence.

Religious persuasion of witnesses.

Contradiction in evidence.

Extra judicial confession.

Particular terms required to make the proof sufficient.

Penalty.

* For commutation of this penalty under regulation law, see para. 1279.

Circumstances in regard to the ownership of the goods, or the mode of taking, which

4258. "A person stealing the property of his father, mother, or any of his ancestors; or the property of his son, or any of his descendants; is not liable to amputation; because such kindred are considered to have a mutual right of usufruct in the possessions of each

other, as well as to hold a joint custody thereof for reciprocal benefit. For the latter reason also amputation is not incurred for stealing the property of any relation within the prohibited degrees, unless it be taken from a stranger's house, in which case there is a violation of custody; nor is it due for stealing the property of a stranger from the house of such a relation. A husband, or wife, stealing the property of each other, or a slave stealing the property of his master,^(a) or mistress, or of his master's wife, or the husband of his mistress, is not liable to amputation; because the thief, in such instances, is at liberty to enter the house, or apartment, of the proprietor; and with respect to man and wife, although they may have distinct places of custody, they possess a mutual usufructuary right in the property of each other. In like manner a master stealing the property of his slave for whom a ransom is stipulated, or whom he has licensed to trade, is not subject to amputation; unless, in the latter instance, the slave have contracted a debt, in which case his property is considered to be in pledge for his creditor. Amputation is not incurred for stealing property out of a public bath, or from a house of general resort, in the day-time; when the custody of such places is questionable: but for thefts in the night-time, when strangers are not allowed ingress, the prescribed penalty is to be inflicted. If a guest steal the property of his host, he is not liable to amputation; as he has been allowed to enter the house; and his offence is considered to be rather treachery than theft: nor is a servant subject to the stated penalty for stealing the property of his employer out of an apartment to which he is allowed access. In cases of burglary, if a thief break through the wall of a house, enter and take property, and be seized before he has carried it out of the house, amputation is not incurred; nor is it, if he give the property, at the entrance of the breach, to an accomplice standing without; because the thief who enters the house does not carry out the property, which, previously to his coming out of the house, falls into the possession of another; and the thief who receives and takes away the property has not committed any violation of custody: the whole of the conditions of theft therefore are not found in this instance.* But if the thief, who enters the house, throw the property out upon the highway, through the hole made by him, and then take it away, his hand is to be cut off, according to the opinion of Aboo Yoosuf; from whom it is further recorded that, if the thief within the house put his hand entirely through the breach, and thus deliver the property to the accomplice without, the former is liable to amputation; as both are, if the thief without put his hand through the breach into the house, and thus take the property from the other within. The principle which governs the latter case applies also where a party of thieves enter a place of custody, and some take away the property, whilst the others stand by; for then the whole incur amputation, as in robbery by open violence, because the accomplices are ready to aid the perpetrators, and are therefore concerned with them in committing the offence. But according to the *Záhir oo' rawáyát* the violation of custody must be completed by the entrance of the thief into the place of custody, whenever this may be practicable; and therefore if a person

prevent the infliction of the legal penalty.

So, in cases of burglary.

* N. A. R. vol. 1, page 250.

(a) But he is liable to discretionary punishment for breach of trust. N. A. R. vol. 1, page 283. And it seems that in all cases, in which the prisoner though guilty is not liable to amputation, discretionary punishment may be awarded.

So, as regards
the completeness
or otherwise of the
custody.

make a breach in the wall of a house, put his hand through, and take out property, without entering the house, he does not incur amputation. If a thief break a hole in a house, and go away, and the owner of the house, though he observe the hole, or though it be visible to passengers, omit to close it; and the thief return another night, and take property from the house; amputation is not incurred: nor is it for two or more successive thefts, each of less than ten dirms, if the owner, after being advised of the first theft, neglect to repair the breach: but if the owner be not advised, the value of the several thefts may be computed collectively. If a person keep his money tied in his sleeve in such a manner that the knot containing it is within the sleeve, and a cut-purse steal it by putting his hand under the sleeve, and tearing away the part which contains the money, he is liable to amputation; as he also is if the knot be tied on the outside, and on being opened the money fall within the sleeve, and is taken from thence by the thief: but if the knot be on the outside and torn away; or on the inside, and opened from without, the penalty is not incurred; the interior part of the sleeve, which is considered the place of custody, not being violated in the two latter instances. If a person steal one of a string of camels, or a load from one of them, he is not liable to amputation, from a doubt whether the camel be in legal custody; unless there be a guard (exclusive of the driver, or rider) for the express purpose of watching the camels, in which case the penalty is incurred; as it also is, if the thief break open a package, and take away its contents, whilst under personal custody. If some of a party of travellers steal the property of others, at their lodging place, though watched by the owners, the thieves are not liable to amputation; the lodging place being common. If a person enter a house by unlocking the door with a false key in the day-time, and take away the effects when no person is present, he is not subject to amputation: but if any of the family be in the house and not privy to the theft, the prescribed penalty is incurred. In like manner, if the door be open, and the thief enter by day, and steal, he is not liable to amputation: but if the door be shut, though not fastened, and he enter clandestinely and take away property, it is stated in the *Hávi* that he incurs the penalty of theft: as he also does if he enter the house at night, and take away property either by stealth or force, after the hour of evening prayer; unless his entering the house be known, at the time, to the owner. It is further stated in the *Hávi*, that if a herd of kids be collected in a fold, and one or more of them, to the value of ten dirms, be stolen from the enclosure, amputation is incurred, whether the owner be present or not. But for cattle stolen from pasture ground the penalty of theft is not due, unless there be a watchman with them, for the express purpose of guarding them."

So, as regards
other
stances.

4259. "A breach of trust does not incur amputation; as the article entrusted is not in custody of the proprietor. Nor is it incurred by openly seizing or snatching away a thing, as such an act is not theft; and the prophet has said that "the hand of a plunderer, or snatcher of property, or of a trust-breaker, is not to be cut off." A *nabbásh*, or stealer from the dead, viz. of a winding-sheet, or other apparel of the dead, is also not liable to amputation, according to Abou Huneefah, and Imam Mahomed; though Abou Yoosuf and Shafei maintain that he is. If a person steal property of which he is in part owner, he is not subject to amputation. And on the same principle, it is not incurred by any

Mussulman stealing from the public treasury in a Mahomedan state : as every thing in it is considered to be common property of Mussulmans, and the thief has consequently a share in it. Lastly, if a creditor steal from the property of his debtor, to the amount of his debt only, amputation is not incurred ; as this is deemed to be an enforcement of right, not theft." A *multakit* or finder, failing to make public advertisement of *lukta* or trove property, subjects himself to discretionary punishment ; such property is considered as a trust in the hands of the finder.*

* N. A. R. vol. 1,
page 308.

4260. "Amputation for theft is not incurred on account of things which, in their original nature, were of common use, and which in their actual state are not esteemed a valuable property ; such as wood, canes, grass, fish, fowls, game, brimstone, limestone, red-earth, mud, clay, dung, and similar articles ; Ayeshah, the wife of Mahomed, having declared that in the prophet's time the stated penalty was not inflicted for such petty thefts ; and the exemplary punishment of them is not judged requisite ; besides which the custody of some of the articles specified is esteemed defective. Nor is amputation incurred for the theft of things which quickly spoil and decay ; such as milk, flesh, and fruit (excepting dried dates, or other fruit kept in store) ; the prophet having expressly interdicted it for these articles. Nor for fruit upon the tree, or grain upon the stalk ; these not being considered in custody. Nor for any intoxicating liquor ; which is illegal or doubtful property. Nor for a drum, or other musical instrument of small value, and used for amusement only. Nor for a koran, though ornamented ; as the custody of it is on account of its contents, not for the binding or ornaments ; and moreover the person taking it may plead that his intention was to read it only. Nor for any other book, except a book of accounts the contents of which not being the object of the theft, the paper, and other materials of which it is composed, are deemed appreciable property. Nor for the door of a mosque, as this is not an object of custody. Nor for a crucifix, chess-board, or chess-pieces, though of gold ; as the thief may excuse himself by saying that he took them with a view to destroy them, being things prohibited. Nor for stealing a free-born infant, with ornaments on his body ; because a free person is not property, and the ornaments are appendages only ; besides which the thief may plead that he took up the infant, when crying, with a view to appease it, or to deliver it to its nurse. Nor for stealing an adult slave ; as such an act is ascribed rather to violence, or fraud, than to theft ; but if an infant slave be stolen, according to Aboo Huneebah, and Imam Mahomed, amputation for theft is incurred ; but Aboo Yoosuf holds a different opinion, on the ground that a slave though considered to be property as such, is not property with regard to his original nature, as a man. Nor for a dog, or lynx ; because such an animal is free by nature, and there is a difference of opinion respecting the property of them."

Descriptions of
property for steal-
ing which amputa-
tion is not incur-
red.

4261. "A sentence of amputation cannot be passed upon a thief, without the attendance and prosecution of the person whose property has been stolen, or his representative. The reason assigned in the Hedaya is, "because prosecution is essential to the manifestation of theft, and, with respect to this rule, it matters not whether the theft be established by confession, or by evidence ; because an offence, committed against the property

Further condi-
tions in regard to
the prosecution and
the possession and
value of the pro-
perty, &c., requi-
site to legalize the
award of amputa-
tion.

of another, can in no way be rendered manifest, but by the prosecution of the aggrieved." However, besides the owner of the property stolen, a depositary, a borrower with or without interest, a hirer, an usurper, a partner in concerns of *muzárabat*, or *mustabzú*, a mortgagee, a father, or any other legal guardian, having possession of the stolen article, is declared competent to prosecute in cases of theft. If the stolen property be again stolen from the possession of the first thief, and the latter have suffered amputation, it cannot be demanded against the second thief; but if the first thief be not convicted, or have not undergone the punishment for theft, it may be enforced, at his requisition, against the second thief. If the stolen property be returned by a thief to the owner before any prosecution is instituted against him, he cannot be sentenced to suffer amputation. But this sentence is not prevented by a restoration of property after the charge is preferred, and evidence adduced in support of it. Execution of a sentence for amputation is stayed however by the gift or sale of the stolen property from the owner to the thief; whether prior or subsequent to the judgment of the kaze. Amputation is likewise stopped, if, after the sentence, a reduction in the market value of the stolen article bring it below the legal standard of ten dirms; but this principle does not apply to any other deterioration, from damage to the property, or any cause excepting a fall of price. It is declared in the Hedaya that "if, after witnesses bearing evidence to a theft, the thief plead that the article, alleged to have been stolen, is his own property, his hand is not to be cut off; although he produce no evidence in support of his plea." Shafei justly objects to this doctrine, "that every thief has it in his power to plead the property being his own; and therefore if punishment be remitted on such a plea, the door of it must be altogether closed." But the *Haniflyu* doctors reply, that "doubt occasions the remission of punishment; and doubt is established by the plea, since it may possibly be true:" they add that Shafei's objection is of no weight "because retraction and denial are admitted after confession, although a person confessing has it always in his power to retract and deny." But this reasoning, however applicable to confessions, when there may be no other proof, is obviously inapplicable to a case established by evidence; and Shafei's objection to the prevalent doctrine therefore remains, as noticed by Mr. Hamilton, "altogether unanswered," or, at least, unrefuted. The same rule is applied in the Hedaya to the case of two persons confessing a theft, one of whom afterwards pleads that the property was his own. In this case, it is stated, "amputation is not inflicted upon either; because the retraction is admitted with respect to the person retracting; and this gives rise to a doubt in regard to the other person, since theft is confessed by each of them as a joint act." Evidence of a theft jointly committed by two persons, one of whom only is present and on trial, will however convict the one present, without waiting the attendance of the absentee. On a trial for theft, if the person whose property is said to have been stolen, declare, even after conviction and sentence, that the property belonged to the party accused, and was held in trust for him; or that the witnesses against him have given false evidence; or (if he have confessed) that his confession is erroneous; or make any other declaration, whereby a doubt can arise of the guilt and legal conviction of the prisoner, he is not to suffer amputation. Other cases, in

which a sentence of mutilation, or the execution of it, is prevented, are detailed in the *Futūwā-i-Aālūm-giri*; but a further specification of them appears unnecessary. It will be sufficient to add, that any stolen property found in the possession of a thief must be restored to the owner; and that the latter has an option to demand the value of his property, or the prescribed punishment, previously to execution of the sentence; but after suffering amputation, the thief is not further answerable for the property. Any sale or gift of stolen property by the thief is however declared null and void. And if another person, after punishment of the thief, destroy or consume it, he is answerable to the owner for the value of it. One punishment for theft, by amputation, as in other cases of hudd, includes all past instances; but does not preclude a further punishment for any future repetition of the offence, as far as the restrictions before stated, concerning amputation, may admit of it."

Restoration of the property.

One amputation for theft includes all past instances.

4262. *Sarika-i-kubra*, or highway robbery, is defined to consist in a party going forth with force capable of resistance for the purpose of committing robbery; or a single person going forth with that intent prepared for resistance, under confidence in his strength and courage. There are five conditions requisite for the infliction of the prescribed penalty; 1st. That there be force sufficient to overcome opposition from travellers whether the robbers be armed with mortal weapons or not. 2nd. That the act be committed at a distance from any city, the extent of that distance being a point on which the authorities differ. 3rd. That the crime be perpetrated within the limits of a Mussulman state (*dar-ul-islam*). 4th. That all the conditions of the minor species of larceny (*sarika-i-sughra*) be found to exist, the robbers also being strangers to the robbed, and legally subject to punishment. 5th. That the robbers be seized before they repent, and before restoration of the property to the person robbed.

Highway robbery, definition, and the five conditions requisite for the infliction of the prescribed penalty.

4263. "Four descriptions of highway robbers are specified in the *Hedaya*, with the penalties incurred by each, upon conviction, according to their respective degrees of criminality. *First*, those who are seized before they have robbed, or murdered any person, or put any person in fear. *Secondly*, those who have committed robbery only; whether upon a Mussulman, or infidel subject. *Thirdly*, such as have perpetrated murder without robbery. *Fourthly*, such as have committed both robbery and murder. Of these descriptions, the first are to be imprisoned, until by their appearance and demeanor they show evident signs of contrition. The second are to suffer amputation of the right hand and left foot; provided the property taken be of such value, as, when divided amongst the whole of the robbers, amounts to ten dirms for each. The third class are to suffer the punishment of death; and, as it is inflicted by the right of God, for public example, and not to satisfy a private claim to *kisas*, the forgiveness of the heir of the slain is of no avail. With respect to the fourth and last class, it is optional with the imam, either to cut off a hand and foot, and then put them to death; or he may put them to death at once, without amputation: he may also order them to be crucified. It is further stated in the *Hedaya* that if a robber, in the predicament first mentioned (*viz.* who may be seized before he has committed robbery or murder), maim or wound a person or persons, there is no distinct

Four descriptions of robbers are specified with the penalties incurred by each.

If the robbery is attended with wounding.

specific penalty (under the provisions of hudd) for the maiming or wounding; but he is liable to retaliation, or the fine of blood, under the rules of kisas for offences short of life, at the demand of the person upon whom the offence has been committed. If the robber have both plundered and wounded, he is to suffer the penalty of amputation (as one of the second description of robbers); and neither fine nor retaliation can be demanded for the personal injury, the public punishment, as with respect to property in cases of theft, superseding the enforcement of private satisfaction. In like manner, if a robber suffer death, in execution of a sentence of hudd, nothing is due to the person robbed beyond a restitution of the property forthcoming, as already stated with respect to theft."

The whole of a gang of robbers are punishable for murder committed by any one of them.

Exceptions in this and other cases, which bar a sentence of hudd

* N. 1. R. vol. 1, page 112.

† 1. para. 1121.

* 1. paras. 155 and 156.

4264. "If any one among a gang of robbers commit murder, the whole are liable to the prescribed penalty or to discretionary punishment extending to death;* "because," says the author of the Hedaya, "the punishment is, in this instance, considered as a penalty for the assault of the whole; which is established by each of them being aiding and abetting to the others."† But if any one of the band of robbers be an infant, or a lunatic, or dumb, or a relation within the prohibited degrees of the person robbed, or murdered; or if any of the robbers have a joint interest in the property plundered; or such property be not in legal custody with respect to any one of the robbers; or if the property taken amount not in value to ten dirms for each robber; or lastly, if the person robbed or murdered be not a Mussulman, or under the permanent protection of a Mahomedan government; a sentence of hudd is prevented, against any of the party.‡ This sentence is also barred by repentance of the robber before he is apprehended and brought to trial; it being declared in the koran, concerning robbers, that "the fixed penalty shall be inflicted upon them, excepting such as repent before the magistrate lays his hands upon them." But the right of the individual, for private satisfaction, holds in this case, under the rules of kisas; and the robbers are responsible for the property taken by them. A robber delivering himself up, with the property, or the value of it, is not to be prosecuted for the stated punishment; nor is any penalty to be inflicted for an old offence, upon a person, who, long before his trial, has ceased to rob, and follows an honest livelihood."

SECTION VI.

OF RECEIVING STOLEN PROPERTY.

Terms to be used in commitment.

4265. In commitments for knowingly receiving or keeping stolen or plundered property, the term "thangeedaree" is not to be used; the charge is to be worded (in Persian) thus: دیدہ و دانستہ گرفتن و داشتن مال سرقة or مغرورته. Const. No. 857.

Receivers where to be tried.

4266. Every person who receives any chattel, money, valuable security, or other property, knowing the same to have been feloniously or unlawfully stolen, taken, obtained, or converted, whether charged as an accessory after the fact to the felony, or with a substantive

felony, or with a misdemeanor only, may be dealt with, indicted, tried, and punished in any place in which he has or has had any such property in his possession, or in any place in which the party guilty of the principal felony or misdemeanor may by law be tried, or in the place where he actually received such property. Act XVI. 1851.

4267. An addition is to be made to the charge in all such cases, with the view to show distinctly whether the property illegally possessed was acquired by theft, burglary, dacoity, highway robbery, or thuggee. The reason of such addition is that persons accused of receiving property, stolen or plundered by thuggee or dacoity, may be committed under Act XVIII. 1839, and Act XXIV. 1843, by any magistrate within the territories of the East India Company,^(a) and may be tried by any court, which would have been competent to try him, had his offence been committed within the zillah, where that court sits;* whereas in the trial of charges for the guilty receipt or purchase of property acquired by theft, burglary, or highway robbery, it is essential to its legal validity, that regard be had to the jurisdiction within which the offence was perpetrated, and to the competency both of the committing and trying officer to take cognizance of the same.^(b) The *Calcutta court* also observe that under the Acts above quoted, commitments for the crime of receiving property obtained by dacoity and thuggee may be tried by the session judge without the aid of a law officer or assessors[†]; whereas in the other cases referred to, the trial cannot be held without recourse to a law officer or to the provisions of Reg. VI. 1832: and they direct that session judges, who try a case without the aid of a law officer or assessors, shall denote on the face of the record the regulation or Act under which the trial is held.^(c) C. O. L. P. No. 215, W. P. No. 217, of vol. 3.

The nature of the offence by which the property has been acquired is to be noted in the charge.

* r. paras. 4111 and 4131.

† r. paras. 4014 and 4133.

If trial is held without law officer or assessors, the authority is to be noted.

4268. The magistrate is to be guided by the following rules in the investigation of charges preferred against individuals for the offence of receiving or buying stolen goods, cattle, jewels, money, or effects of whatever description, knowing the same to have been stolen. Reg. XII. 1818, sect. 4, cl. 1.

Magistrate to be guided by the following rules.

4269. All prisoners who appear to the magistrate, from the investigation held by him, to be guilty of having purchased or received plundered or stolen property of any description knowing at the time of his purchasing or receiving the same that such property had been obtained in the perpetration of robbery by open violence, or of theft accompanied with any of the aggravating circumstances described in cl. 2. sect. 2* [*i. e.* aggravated cases of burglary] or cl. 2, sect. 3[†] [*i. e.* cases of theft which the magistrate must or may commit for trial before the sessions court] of this regulation, are to be committed by the

What cases must be committed.

* v. para. 4236.

† r. paras. 4172 and 4175.

(a) This construction deserves notice, because neither Act XVIII. 1837, nor Act XVIII. 1839, expressly declares, that persons charged with the offence of unlawfully and knowingly receiving or buying property stolen or plundered by thuggee, may be committed by any magistrate; the latter Act makes the offence triable by any sessions court; and it seems to be deduced therefrom that such commitments may be made by any magistrate.

(b) This argument regarding the venue of trial for receiving stolen property has been set aside by Act XVI 1851, given in the preceding paragraph; but the order contained in the circulars appears to be still in force.

(c) This latter portion appears to have been expressly excluded from their circular order by the *Western court*; and it would seem according to Const. No. 1074 (para. 4015) that the aid of the law officer or assessors cannot be dispensed with on the trials of prisoners charged with specific acts of receiving property which has been obtained by thuggee.

magistrate to take their trial before the sessions court; and such persons, if convicted before the sessions court of the offence of receiving or buying plundered or stolen goods, cattle, jewels, money, or effects of whatever description, knowing at the time that such property had been obtained by robbery, or by theft accompanied with any of the aggravating circumstances described in cl. 2 of sect. 2, or cl. 2 of sect. 3, of this regulation, are to be sentenced by the session judge, according to the circumstances of the case, to such period of imprisonment as appears proper, in no instance however exceeding 14 years, and to corporal punishment [now commutable to 2 years' additional imprisonment]. Reg. XII. 1818, sect. 4, cl. 2.

Such trials may
not be referred

4270. Where a prisoner was convicted by a session judge, concurring with his law officer, of receiving plundered property knowing it to have been obtained by robbery by open violence attended with murder, it was held that he was fully competent to dispose of the case himself, and could not refer the trial to the nizamat adawlut. N. A. R. vol. 5, page 179.

When the
amount or value of
the property stolen
exceeds 300 rupees,
the receivers of any
portion of it must be
committed

4271. The provision for commitment in sect. 4, Reg. IV. 1820,—which enacts that in cases of theft, where the amount or value stolen exceeds the sum of 300 rupees, the amount is to be deemed a circumstance taking the case out of the magistrate's jurisdiction as to passing sentence on the accused, and is to make it necessary for him to commit the accused for trial to the sessions court,—is applicable to purchasers and receivers of stolen property, knowing at the time that such property was stolen, when the amount or value of the property stolen exceeds 300 rupees. Reg. VI. 1824, sect. 4.

What cases may
be committed,

4272. The magistrate is also empowered to commit for trial to the sessions court any prisoner charged with the offence of buying or receiving stolen property of whatever description, knowing at the same time that such property had been stolen, although the property may not have been obtained in the perpetration of theft accompanied by any of the aggravating circumstances described in cl. 2 of sect. 2, or cl. 2 of sect. 3, of this regulation, provided that the prisoner has been before convicted of the offence of buying or receiving stolen property, or of robbery, burglary, theft, or other heinous crime, or that the prisoner appears to be an habitual and professional receiver of stolen property, or a person of notoriously bad character;—and such person is, upon being duly convicted before the sessions court, to be liable to such punishment, within the limitations prescribed in the preceding clause of this section, as the sessions court judges proper to direct on a consideration of all the circumstances of the case. Reg. XII. 1818, sect. 4, cl. 3.

and what sentence
may be passed in
such cases,

Previous conviction
of theft of 10
rupees not to be
considered conviction
of a heinous
crime.

4273. A previous conviction of petty theft, not exceeding ten rupees, when unattended with any aggravating circumstance, is not to be deemed a previous conviction of a heinous crime, such as precludes the magistrate's judicial cognizance of a charge of buying or receiving stolen property, and requires that the prisoner be committed for trial before the sessions court in the above provision. Reg. VI. 1824, sect. 5.

It is to be specifically
mentioned
in the futwas and
abstract statement,

4274. Session judges are to be careful that their law officers state specifically in their futwas, declaring any persons to be convicted of receiving or purchasing stolen or plundered property, that such persons are convicted of having received or purchased such

property “knowing the same to have been stolen or procured by robbery.” And the judge is to enter the same specification in the abstract statements. C. O. No. 115 of vol. 1.

that the offence was committed knowingly.

4275. With exception to the cases above-mentioned, the magistrate is to hear and determine, without reference to the sessions court, all other cases in which individuals are charged with the offence of buying or receiving stolen property of whatever description, knowing it at the time to have been stolen; or with the offence of having in their possession property obtained by theft or robbery, and knowing at a period of time subsequently to its first coming into their possession, that such property had been so obtained, notwithstanding which they have kept the stolen property in their possession without restoring it to the owner or giving information to the local police officer or magistrate. In such cases the magistrate, after having duly considered the evidence in support of the prosecution, the defence of the prisoners, and the evidence of the witnesses designated by the prisoners, is to proceed to pass sentence of conviction or acquittal: if the prisoners are convicted, the magistrate is empowered to sentence them to imprisonment with hard labor for a period not exceeding in any case 2 years, and to corporal punishment [now commutable to one year's additional imprisonment]. Reg. XII. 1818, sect. 4, cl. 4.

In all other cases of receiving or retaining possession of stolen property, the magistrate may pass what sentence.

4276. A magistrate is not competent to punish receivers of stolen property in any case, the aggravating circumstances of which render the commitment for trial of any of the prisoners necessary; but he must commit them for trial under the rule contained in cl. 2, sect. 4, Reg. XII. 1818. Const. No. 857.

Magistrate may not punish one, if the commitment of any other prisoner is necessary.

4277. The magistrate is to make a point of recording, in his roobakaree of commitment, the express circumstance or circumstances of aggravation, which have led him to commit a case of receipt of stolen property instead of disposing of it himself; and the session judge is to give the same information in his abstract statement of sentences passed without reference. C. O. No. 239 of vol. 1.

The magistrate in his roobakaree, and judge in his statement, are to note the circumstances leading to commitment.

4278. The knowingly receiving property acquired by burglary, comes under the general definition of property acquired by theft; and a discretion is left as to the degree of punishment according to the circumstances. Const. No. 303.

Property acquired by burglary is property acquired by theft.

4279. When the stolen property has been traced to the possession of the prisoner shortly after the theft, and he is unable to account satisfactorily for its possession, the presumption is that he was the actual thief and not merely the receiver. Reports *L. P.* 1855, part 1, page 28.

Presumption against person found to possess stolen property.

4280. A conviction of receipt of stolen property can be sustained only when there is proof of the personal possession of such property by the prisoner, as by having the property in his own hands, or directly under his personal charge, or within his house, with his consent and with a knowledge on his part of its having been obtained by theft or robbery. When proof of personal possession in some of these modes is wanting, there may be ground for a conviction of accessoryship after the fact in a robbery, but not for that of the receipt or possession of the plundered property. N. A. R. vol. 6, page 147.

Proof required to sustain charge.

The mere purchasing of stolen property is not an offence;

4281. There is no law, since the abrogation of sects. 12 to 25, Reg. I. 1811, which empowers magistrates or judges to punish sonars or other persons for purchasing suspicious property, without giving information to the police. And a session judge is not at liberty to make any act penal which is not declared to be so by the law of the land. Reports *W. P.* 1855, part 1, page 525. Where there is no criminal knowledge there is no offence. Reports *W. P.* 1855, part 1, page 828.

although the seller bears a bad character;

4282. The presumptions, which establish the guilty knowledge, must be matter of evidence in each case. It is not sufficient for a legal conviction that the prisoner bought the stolen property from a person of bad or doubtful character without inquiry as to the means by which he acquired it. Reports *L. P.* 1852, part 2, page 666.

and the price paid is below real value.

4283. But the mere fact of the prisoner having purchased the property at a price much below the real value of it, is insufficient to establish a valid presumption of guilty knowledge; and where the acts of the prisoner, in other respects, were opposed to a belief in his guilt, he was acquitted. Reports *L. P.* 1855, part 2, page 307.

But subsequent acts may show guilt in purchase.

4284. When the prisoner urged his respectability to show that in receiving the stolen property, he had no knowledge of the manner in which it was acquired, the court held that the guilty knowledge was established by his concealing the property, by his not entering it in his accounts, and further by his obtaining it without any enquiry from two persons of notoriously bad repute, one of whom had been previously convicted of theft. Reports *W. P.* 1855, part 1, page 111.

It does not necessarily follow that the possession of stolen property, the knowledge that it was so acquired having subsequently arisen, is criminal. The magistrate has a discretion not to punish at all. And if the judge pass a higher sentence than for 8 years' imprisonment, he is to state the grounds of such sentence in his abstract statement.

4285. Although the act of having possession of property obtained by theft or robbery, without having received it with the knowledge that it was so obtained, such knowledge having only subsequently arisen, is punishable under the Mahomedan law and the above provisions, yet it is not intended to declare that it is in every instance punishable; as it must obviously depend on the circumstances of each particular case, whether the act in question is, or is not, a criminal offence: under the discretion which cl. 4, sect. 4, Reg. XII. 1818 allows to the magistrate, he is considered to have a discretion not to punish at all, in cases in which no criminal act appears to be fairly imputable to the *bonâ fide* purchaser or possessor of property acquired by robbery or theft. Where it is determined, on the circumstances, to be an offence, and is left punishable by the *futwa* at discretion, (as the act is evidently of a very different complexion from that of being a criminal receiver of stolen goods, and thereby a principal encourager of goods being stolen) it is the opinion of the *nizamut adawlut* that it should be punished as a misdemeanor not of a very serious nature; and that a sentence equal to that, to which the magistrates are limited by the above provisions, is sufficient in most cases as a maximum of punishment: accordingly, in any instance where a higher penalty is adjudged, a particular statement of the grounds of such sentence is to be inserted in the abstract statement of prisoners punished without reference. The above remarks show how essential it is, in the trial of charges for receiving stolen property, or property acquired by robbery, not only that the evidence

to ground a conviction should go to the mode and circumstances of the receipt, and not to the mere fact of possession ; but also that the law officer, where it is intended by him to convict of the criminal receipt, should specify the same clearly and precisely in the terms of which he makes use. C. O. No. 215 of vol. 1.

4286. The court, having observed several instances, in which prisoners, who were apparently guilty of the offence of receiving stolen property knowing it to have been stolen, were committed to the sessions court for trial on a charge of knowingly keeping stolen property in their possession, which charge does not necessarily imply that the property so retained was received with the knowledge that it had been stolen,—deemed it expedient to call attention to the distinction pointed out, in the C. O. quoted above, between the receipt of stolen goods with a criminal knowledge which is a heinous offence, and the act of retaining possession of them when the knowledge of their having been stolen has arisen subsequently to their receipt, which is a simple misdemeanor. Care and precision are enjoined in framing indictments in cases of the kind in question. Whenever there is any doubt as to whether the higher or lower grade of offence has been committed, the charge should always be made for the higher grade on the principle laid down in para. 16 of C. O. No. 54 of vol. 2. C. O. No. 103 of vol. 4. *W. P.*

Care enjoined in framing charges that the distinction above-noted should be observed. If there is doubt, the commitment should be for the higher offence.

4287. A husband and wife should not be indicted jointly as receivers of stolen property found in their house, unless it be in evidence that the wife acted independently and not under the influence of her husband. N. A. R. vol. 1, page 353 ; and vol. 6, page 92.

Husband and wife not to be indicted jointly as receivers.

4288. Where a person was discovered dead in his house, and his jewels afterwards found in the possession of the prisoner, the latter was convicted of receiving property, knowing it to have been obtained by theft attended with murder, although nothing was adduced to show the period of time up to which the property had remained in the possession of the deceased. N. A. R. vol. 2, page 425.

It is not necessary to prove that the person robbed had possession of the property up to the time of his death.

4289. It is hereby explained, that persons, charged with the offences specified in the preceding clauses of this section, may be brought to trial and sentenced to punishment, although the actual perpetrators of the theft or robbery have not been convicted ; provided, however, that the fact of the theft or robbery having been committed be established, and it be proved that the purchaser or receiver knew that the property in question had been obtained by theft or robbery. Reg. XII. 1818, sect. 4, cl. 5.

Receivers of stolen property may be punished, though the thieves have not been convicted.

The fact of the robbery must be proved.

4290. On general principles, and under the provisions of the Mahomedan law of evidence, the record of the conviction of a person charged with theft is not conclusive proof against an alleged receiver of stolen goods to prove the theft, if the latter desire to controvert the propriety of the conviction, and produce evidence to negative the fact of a theft having been committed. Const. No. 217.

The record of a conviction of theft is not sufficient to prove the theft, if the alleged receiver desires to disprove it.

4291. In answer to a court of circuit who objected to the practice of sentencing receivers of stolen property to a more severe punishment than that which is awarded to the thief, the nizamat adawlut replied that they were not prepared to narrow the discretion confided to the magistrates by the above provisions ; as the offence of receiving stolen property admits of so many shades of difference, that it would be impracticable to define,

The amount of punishment awarded to the thief is no criterion for the sentence to be passed on the receiver.

with any degree of accuracy, under what circumstances a case of that description should be considered to be of an aggravated description or otherwise. Const. 466.

Property to be retained, if case committed.

4292. The magistrate ought not to restore the stolen property to the owner in a case committed to the sessions. Reports *L. P.* vol. 4, part 1, page 215.

Precedents.

4293. Where the prisoner was convicted of receiving property, knowing it to have been obtained by theft attended with murder, he was sentenced to imprisonment for 14 years; *N. A. R. vol. 2, page 425*. On conviction of the guilty receipt of embezzled property, the wife and brother of one of the persons convicted of the actual embezzlement were sentenced, for retaining possession of and concealing part of the property, to imprisonment for 2 years; and another also a relation of one of those persons was sentenced, for disposing of part of the property, to imprisonment for 4 years; *N. A. R. vol. 5, page 1*. Where stolen property was found in the houses of the prisoners two years after the theft, and there was no proof that, at the time of receiving it, they knew it to be stolen, they were acquitted; *N. A. R. vol. 2, page 325*.

Restitution of stolen property.

4294. There is no regulation which prohibits the delivery to the person robbed of any articles, which are proved to belong to him, or to have been purchased with money stolen from him. The officer disposing of the case must exercise his discretion in the disposal of the property. Const. No. 604.

Not only the stolen money or property may be restored; but also the property purchased with the stolen money.

4295. Three sonars were convicted of embezzling 1752 rupees from some travellers, who rested one night in their house; on a subsequent search of their premises 241 rupees were recovered; certain mahájans gave up 300 rupees with which the son of one of the prisoners had purchased gold mohurs from them; and other sums were recovered from a person from whom the same man had redeemed certain ornaments, and from a mokhtar who had placed part of the stolen money with a banker. It was decided, in accordance with both the Mahomedan and the English law, that the person from whom the money was embezzled was entitled to the restitution of it, whether the rupees were the identical coins embezzled or others restored in lieu of them; and the court directed payment of the whole amount recovered to be made to the prosecutor. (a) *N. A. R. vol. 5, page 1*.

(a) In English law, by 7 and 8 Geo. 4, cap. 29, sec. 57, in order to encourage the prosecution of offenders, it is enacted, that "if any person, guilty of any such felony or misdemeanor as aforesaid, in stealing, taking, obtaining, or converting, or in knowingly receiving any chattel, money, valuable security, or other property whatsoever, shall be indicted for any such offence by or on behalf of the owner of the property or his executor or administrator, and convicted thereof, in such case the property shall be restored to the owner, or his representative; and the court, before whom any such person shall be so convicted, shall have power to award, from time to time, writs of restitution for the said property, or to order the restitution thereof in a summary manner: provided always, that if it shall appear before any award or order made, that any valuable security shall have been *bond fide* paid or discharged by some person or body corporate liable to the payment thereof, or being a negotiable instrument shall have been *bond fide* taken or received, by transfer or delivery, by some person or body corporate for a just and valuable consideration, without any notice or without any reasonable cause to suspect that the same had, by any felony or misdemeanor, been stolen, taken, obtained, or converted as aforesaid; in such case the court shall not award or order the restitution of such security." The court cannot, under the above provision, order a Bank of England note, which has been paid and cancelled, to be delivered up to the prosecutor of an indictment against the party who stole it. Where a prisoner was convicted of stealing money, and it appeared that he had left in the care of another a horse, which it was clear, from the evidence, he must have purchased with the stolen money, the judge made an order for the delivery of the horse to the prosecutor. *Roscoe's Digest*.

4296. The session judge is to require the magistrate to certify the execution of all orders for the restoration of stolen property, either in the return endorsed on the warrant of the sessions court, or in a subsequent return to be made as soon as the execution of the order admits: and such certificates are to be carefully preserved among the records of the sessions court. C. O. No. 5 of vol. 1.

Magistrate to furnish certificate of the execution of order for restoring stolen property.

4297. Voluntary restitution of the property by the prisoner does not relieve him from the consequence of the criminal act. Reports *W. P.* 1852, page 184.

Voluntary restitution does not purge from crime.

4298. All criminal courts, within the territories under the government of the East India Company, may add to the punishment competent to them to inflict upon persons convicted before them of robbery, theft, embezzlement, knowingly receiving stolen goods, cheating, or other wrongful appropriation of property, or of being accessory or privy to any such offence, the punishment of fine not exceeding the loss appearing to be caused to the several persons who have suffered by such wrong; and may pay and distribute the proceeds of the said fine, or any part thereof, to or for the benefit of the said several persons, according to the discretion of the court. Act XVI. 1850, sect. 1.

Restitution of value of stolen property.

Fine not exceeding in amount the property stolen may be inflicted, and may be paid to parties injured, in cases of wrongful appropriation of property;

4299. These provisions apply to cases of plunder of property. Reports *L. P.* 1854, part 2, page 348.

including plunder.

4300. The order imposing such fine can be passed only by the court which convicts the prisoner. The officer making the commitment has no authority to pass an order of that nature. Reports *W. P.* 1851, page 665.

Order must be passed by court which convicts.

4301. Payment of every such fine may be enforced by distress and sale, under the order of the court, of the goods of the offender. Act XVI. 1850, sect 2.

Enforcement of fine.

4302. Such fine must be paid to the aggrieved person, as it can be imposed only for the purpose of his reimbursement. Reports *L. P.* 1852, part 2, page 291.

Must be paid to the aggrieved person.

4303. When the property of the prisoners is declared liable under this rule, the order must find the amount of property actually carried off. Reports *L. P.* 1856, part 1, page 583.

Exact amount of property lost to be inserted in order.

4304. The aggregate of such fines cannot exceed the value of the property carried off, less the value of any portion of it that may have been recovered. Reports *L. P.* 1853, part 1, page 190. Reports *W. P.* 1856, part 1, page 187.

Not to exceed actual loss;

4305. In the application of a heavily penal law, such as Act XVI. 1850, much care and discrimination are necessary, so as to reduce within fair and credible limits the amount of loss on account of which a fine is awarded as compensation. C. O. No. 8, September 12, 1854. *L. P.*

and to be confined within reasonable limits.

4306. The judge awarding such fine, should record on what evidence he has concluded that property to that amount was really stolen. Reports *L. P.* 1854, part 2, page 369.

Judge to note evidence on which amount is found;

4307. It should always be distinctly mentioned in a sentence whether such fine is to be levied jointly or severally. Unless from some special circumstances in a case, such

and whether fine to be levied jointly or severally.

finer should be imposed jointly and severally upon prisoners convicted of participation in a common offence. Reports *L. P.* 1853, part 2, page 114.

Execution of decree to be stayed pending appeal.

4308. The order, directing the levy of a fine under the above provisions, should not be carried into execution until the period for appeal has elapsed; and, in the event of an appeal being made, until the final sentence has been passed. C. O. No. 55 of vol 4. *L. P.*

The law cannot be enforced in another jurisdiction.

4309. Sect 2, Act XVI. 1850 contains no provision for distraining and selling the goods of an offender in another jurisdiction. The distress and sale must be made under the orders of the court directing them; and the orders cannot be transferred for execution elsewhere without express provision to that effect, as in other cases where the law lays down rules for giving effect to the orders of a magistrate of one district in a different one. Letter of N. A. to Magistrate of 24-Pergunnahs, No. 1415, October 6, 1852.

General remarks of the sudder court on the working of Act XVI. 1850.

4310. The mode of operation of Act XVI. 1850, has come under recent notice in connection with the administration of criminal justice, and it has been observed that the provisions of that enactment are, in many districts subject to the court's control, altogether unenforced; that, in others, if not inoperative, the law is only very partially and capriciously acted on; and that, generally, no obligation appears to be recognised of carrying out the object and intention of an enactment which, though in its terms permissive and not injunctive, is based on acknowledged principles, and, having been framed by the legislature for practical enforcement, ought not to be ignored by those charged with the administration of the criminal laws. From returns prepared in the court's office, calculated to show the extent to which the Act referred to has been enforced from the time it came into effect in these provinces in the sessions and magisterial courts, a great inequality of operation is manifest, the magistrates of some districts having made no use of its provisions, while in others effect has been generally, though to no large amount in money value, given to it by the magistrates' courts. The sessions courts have, in some instances, imposed large fines, but with almost no result, and some defect of machinery for carrying into execution the order of the court in this particular must be inferred from the nearly entire failure to realize any portion of the fine so imposed. With a view to urging on the local tribunals a consistent and regular, and at the same time guarded, enforcement of the provisions of this law, the court think it needful to notice what appear to be the principles on which the enactment is founded, and whether they are rightly apprehended by the mass of those who are called upon to administer it. The Act is for "restitution of the value of stolen property," and applies to all kinds of misappropriation of property, empowering all criminal courts to add to the punishment they are competent to inflict for the offences named, "the punishment of fine not exceeding the loss appearing to be caused to the several persons who have suffered by such wrong," payable and distributable, in whole or in part, to or for the benefit of such sufferers. The presumed basis of this law is the opinion of the writers of the Indian Code, "that every person who is injured by an offence ought to be legally entitled to a compensation for the injury:"—also "we are inclined to think that an arrangement might be adopted under which one trial would do the work of two: we conceive that in every case in which fine is part of the punishment of an offence, it ought to be com-

Principles on which the enactment is founded.

petent to the tribunal which has tried the offender, acting under proper checks, to award the whole, or a part, of the fine to the sufferer, provided that the latter signifies his willingness to receive what is so awarded in full satisfaction of his civil claim for reparation." As has been remarked by the government the principle of not allowing a depredator or his family to enjoy the profits of his wrong doing, and of making, as far as can be done, a prompt restitution or compensation to the sufferer, is obviously, in so far as it can be accurately applied, most essential to the satisfactory and efficient administration of criminal justice. The law, in its practical working, may be contemplated in a two-fold light, in its bearing on the *criminal*, and its possibly over-severe operation, in some instances, on *him* as well as on others, and in its effect on the interests of parties suffering wrong by his acts, viz. how far the object of the act is fulfilled in securing indemnification of their loss. In regard to the *first* matter, its effect on the criminal, when provision is made for a fine "not exceeding the amount of loss appearing to have been sustained," apprehensions might, not unnaturally, be excited by the fact of the little reliance which can ordinarily be placed on the reports made of the amount value of property stolen, and of the temptation presented by such a provision for sufferers to exaggerate their loss or even accuse men of substance falsely, involving the risk of great harm and injustice, in the hands of inconsiderate or inexperienced officers, in regard to the discreet application of the law. It might further be feared that the knowledge of such a law, and of the discretionary power conferred by it, would itself tend to increase the laxness of estimate or dishonest inclination noticed above, or to create it where it did not exist. It would perhaps be apprehended that even respectable persons might not regard themselves as bound to strict veracity or exactitude in their narrative of loss, where the party affected by it is one who has injured them, and is, indeed, the enemy of the community; and it would be suspected that, even if no *intentional desire* to exaggerate a loss should exist, such a result would be no improbable one in the case of rich individuals who may not actually know *what* their personal property or amount of cash was, or, consequently, *what* may have been abstracted. Caution and discretion in exercising the powers conferred by the Act are, doubtless, suggested by these considerations, in order to the prevention of abuses; and, in applying a highly penal law like this, much care and discrimination are needed to reduce within fairly credible limits the amount of estimated loss in compensation of which a fine is imposed; and, consequently, where the alleged value of stolen property may be the *sole reason* for the commitment of a prisoner, such proof should be placed on record by the criminal courts as may show a reasonable probability that the loss sustained by the prosecutor really amounts to the sum specified, and charged in the indictment. It may, at the same time, be doubted whether, in practice, evil results of the above kind, in the abuse by prosecutors of the provisions of the law, have been, to any extent, common or prevalent; nor can the mere *anticipation* of such consequences be any sufficient reason for judicial officers neglecting to carry out, on fit occasions, the intention of the enactment. It would, on the other hand, be open to remark that the interests of the sufferer from misappropriation must be very imperfectly secured by a provision which may be altogether inoperative from the poverty, or be evaded and defeated by the cunning, of the criminal and his friends, and the reimbursement contemplated by which must, in all or most thefts of large amount, be partial and inadequate by reason of the restricted application of

Caution and discretion necessary in regard to value of property stolen.

* See paras. 4183 and 4184.

Only moveable or personal property can be sold.

Property cannot be attached before sentence.

Fine may be adjudged after decision of case.

Sentence of fine should be passed on all reasonable occasions without reference to the probability of its realization.

But it should be realized whenever practicable.

the distress and sale to the "goods," that is to the moveable or personal property, which only, it has been held, is liable to the process of distraint, whereby *houses* (among other property) are exempted. Further, if any tangible property liable to distraint under this law should be forthcoming, the difficulty arises of its being contrived to be secreted, or made away with, in the interval between the apprehension of the criminal, and the final process of distraint following upon fine after conviction, and of a consequent evasion of the Act. The attachment of any personal property of parties accused of theft, *upon apprehension*, with a view to securing the eventual indemnification of the party losing by such Act, is not a procedure warranted by this enactment. It has also been doubted whether the presiding authority in a criminal court, proceeding under the Act, is competent to pass an order of fine, within its meaning, after decision of the case, or whether it is absolutely necessary that such order should be passed at the time of decision. The latter obligation may be thought to be implied, but is not expressly *declared* by the terms of the Act; though instances are frequent of prosecutors, after a criminal sentence has been passed, coming forward with a claim for reimbursement and with indication of concealed or alienated property which they have discovered, belonging to the sentenced culprit. With regard to the practice of the local authorities, in their appreciation of the purpose of the law, the court observes that much uncertainty and diversity appear to exist. Some officers, advertent to the permissive terms of its provision, have not felt themselves under obligation to apply them in practice. Others, instead of imposing the fine allowed, and leaving the result to work itself out, have been wont *first* to institute an enquiry as to the existence of property, and the means of realizing any fine which might be imposable, arguing that where the absence of material of payment is certain or presumable, it is useless to go through the form of an award. Others have spoken of the working of the Act, and their sense of the obligation they are under to enforce it, chiefly in respect to its supposed effect, or otherwise, on the repression of crime. In these several instances, misapprehension to a greater or less extent, appears to the court to exist. Officers are bound to avail themselves of all reasonable occasions of enforcing the laws which may be enacted for their guidance, irrespectively of a future contingency for which they are not responsible. While, moreover, one of the results of such a penal law, when equally and duly executed, might be to repress crimes against property, yet its primary intent and object appear to be the more perfect vindication of justice by not only punishing the wrong-doer, but also awarding compensation for the wrong. The court consider that the foregoing remarks are sufficient, at present, to direct the attention of the zillah authorities, generally, to the importance of carrying out the permissive provisions of the law in a way calculated to avoid, on the one hand, the risk of exaggerated estimates of loss or false and perjured implications of innocent people, and to secure, on the other, the prompt reimbursement, as far as may be practicable, of parties who have suffered loss of property by the lawless acts of offenders. To this end, it is not enough that a fine be merely *imposed*; it must be *realized*. The Act must have a fair trial given to it, and the local officers will then possess means, which are wanting at present of testing its practical utility, and suggesting improvements or indicating defects. C. O. No. 103, January 2, 1855, *W. P.*; and No. 15, March 21, 1855, *L. P.*

4311. The following register is to be kept up by the magistrate of all fines imposed under Act XVI. 1850, and the entry of each fine is to be made as soon as the order is passed. An abstract of this register showing the items still unrealized, with explanations of the causes of delay in recovering the amount, is to be submitted to the court with the magistrate's annual criminal report.

Register of all such fines to be kept up pending the realization of them.

Year.	Number of case.	Name, caste, age, and residence of person fined.	Amount of fine.	Date of fine.	Name, age, caste, and residence of person to receive the fine.	Steps taken to recover the amount.	Remarks.

In the column of remarks are to be entered the date of recovery of any part of the fine, the amount recovered, and the source from which the amount realized was derived. The column will remain open until the whole amount of the fine has been recovered, or until it appears to be hopelessly irrecoverable, in which case an entry is to be made to show the date on which the case was struck off, and the reasons why its further continuance on the file may be considered useless. C. O. No. 12, April 29, 1857. *L. P.*

CHAPTER II.

OF MALICIOUS OR WANTON DESTRUCTION OF CATTLE.

4312. Whoever is charged with maliciously or wantonly causing the death of any cattle, the property of another, may be proceeded against in the mode prescribed in section 25, Regulation XX. 1817* for proceeding against persons charged with a heinous offence ; and shall, on conviction before a magistrate (or other officer exercising the powers of a magistrate), be liable to imprisonment with hard labor for any period not exceeding three years ; or, at the discretion of the said magistrate, may be committed for trial before the session judge, and, on conviction, shall be liable to imprisonment with hard labor for any period not exceeding nine years.^(a) Act IV. 1856, sect. 1.

May be treated by police as a heinous offence.

* See paras. 2319, et seq. Power of magistrate.

Power of judge. Value of cattle to be restored.

4313. The provisions of Act XVI. 1850† are applicable to persons convicted of offences under this Act. Act IV. 1856, sect. 2.

† See paras. 4298, et seq.

(a) Under the Mahomedan law, cruelty to animals causing, though not intended to cause, death, although unaccompanied by any malicious intent towards their owner, is an offence punishable under the general head of *tazeer*. Reports *L. P.* 1852, part 1, page 831.

The law quoted in the text is not applicable to attempts to commit the offence described. But for such an attempt a sentence of 7 years with labor was confirmed by the Sudder Court. Reports *L. P.* 1856, part 1, page 313.

CHAPTER III.

OF ARSON.

Definition of arson.
Punishable by the sessions court only.

4314. The wilfully and maliciously setting fire to any village, town, house, or other building, constitutes the crime of arson, which is punishable only by the sessions court. This definition includes the malicious and wilful burning of a boat laden with men or merchandise, or of a tent, or other place used for the time being as a dwelling. Acts of incendiarism other than the above do not fall within the definition of arson found in the regulations; and the criminality of such acts varies very much according to the presumed motives of the incendiary, the effect of his act either actual or probable, and generally the circumstances which distinguish it. But there is nothing in the regulations which precludes a magistrate from disposing finally of such cases, provided he considers the punishment, which he is competent to award under sect. 19, Reg. IX. 1807, adequate to the offence proved. The magistrates are to act according to this view of the law, bearing in mind that, if by any act of incendiarism, not coming within the above definition of arson, lives are endangered or valuable property destroyed, or if the act is accompanied by other aggravation, they are at liberty to exercise their discretion in committing the accused to the sessions court. In such cases, however, the magistrates are required to state specially in the calendar or roobakaree of commitment their reasons for making over the prisoners to the sessions court, in preference to passing sentence themselves; and any commitment of this kind, for which such special reason is not assigned, is liable to be cancelled. Those cases, in which the sentence sanctioned by cl. 7, sect. 2, Reg. LIII. 1803 is considered insufficient, are to be referred by the session judges for the final orders of the nizamat adawlut under sect. 6, Act XXXI. 1841. C. O. No. 13 of vol 4.

All other cases are within the competence of the magistrate.

But he may commit those accompanied with aggravation :

explaining his reasons in the calendar or roobakaree.

If the discretionary punishment within the competence of the judge is insufficient, he is to refer the trial.

Cases of arson must be committed.

4315. Cases of arson as defined in C. O. No. 13 of vol. 4 must be committed to the sessions. Wilful arson of course implies a malicious intent. Reports *L. P.* 1852, part 1. page 893.

Separate sentence required for each offence.

4316. Arson and incendiarism are not offences, the penalties of which are within the scope of sect. 2, Reg. VI. 1824. That section refers to convictions and sentences of burglary and theft only. Reports *L. P.* 1852, part 1, page 893.

Terms to be used in the vernacular.

4317. The word "sokhtugee" it is thought is not a proper equivalent for "incendiarism" and the use of the terms آتش زنی خفیف and آتش زنی شدید to represent arson and incendiarism respectively, is recommended. C. O. No. 16 of vol. 4. *W. P.* The following terms are prescribed for use in the *Lower Provinces* in all statements and proceedings:—arson *داوة اجناس وغيره جلا دينا*; incendiarism *داوة مكانات وغيره جلا دينا*; *দেবপুত্রক গৃহাদি দাহ করণ*; —incendiarism, *দাৱা অজনাস ওগৈৰে জলা দিনা*; *দেবপুত্রক দুব্যাদি দাহ করণ*. C. O. No 20 of vol. 4. *L. P.*

Precedents,—arson.

4318. Where the arson was committed by a body of armed men, who attacked and destroyed a rival hath, the prisoners were sentenced to imprisonment for 5 years with labour and irons; Reports *L. P.* 1851, page 364 and 963. And the same punishment was awarded when a house was wilfully set on fire at night, although the motive was not apparent

Reports *L. P.* 1851, page 1729:—and where the act was done openly and from motives of revenge; Reports *L. P.* 1852, part 2, page 288; and 1853, part 2, page 390. Where the value of the property destroyed was large, sentence was passed for 7 years' imprisonment. Reports *L. P.* 1853, part 2, page 926. Where the prisoner set fire to his own house, giving notice thereof to his neighbours, apparently without motive, and but little harm was done, he was sentenced to imprisonment for one year without labor or irons. *N. A. R.* vol. 3, page 230. And where the prisoners, who cultivated a piece of land of which the proprietor had lately granted a lease to an indigo-planter, evinced a disposition not to relinquish the land, and threatened to burn the factory, if they were deprived of possession; and one of them at night set fire to a heap of old and worthless indigo weed distant only six paces from the factory, while the other stood by aiding and abetting, and the weed was burnt; the former was sentenced to imprisonment without labor and irons for one year, and the latter (in consideration of his youth, 14 years) for four months. *N. A. R.* vol. 3, page 362.

4319. Where the prisoners maliciously and by open violence set fire to some mustard plant stored in sheaf, the ringleader was sentenced to 5 years' imprisonment with labor and irons. Reports *L. P.* 1853, part 2, page 526. And in a similar case, with reference to the large amount of property destroyed, the imprisonment awarded was for 14 years. Reports *L. P.* 1854, part 1, page 696; 1855, part 2, page 565; and 1856, part 1, page 312. So, in a similar case, for 7 and 5 years. Reports *W. P.* 1853, part 2, page 1556.

Precedents.
incendiarism.

NOTE.

By the English common law, the offence of arson is a felony, and is defined by Lord Coke to be the malicious and voluntary burning the house of another, by night or by day. It must be the house of another; the burning of a man's own house is no felony at common law; but if a man set fire to his own house maliciously, intending thereby to burn the adjoining house belonging to another, if the latter house is burned, it is felony; if not, it is a great misdemeanor. To constitute arson at common law, it must be proved that there was an *actual* burning of the house, or of some part of it, though it is not necessary that any part should be wholly consumed, or that the fire should have any continuance, but be put out, or go out of itself. The *setting fire* to the house of another maliciously to burn it, is not a felony, if either by accident, or timely prevention, the fire does not take place. Where a house has been robbed and burnt, proof that part of the stolen property was found in the possession of the prisoner is evidence to show that he committed the arson. The act of burning must be proved to have been both wilful and malicious, otherwise it is only a trespass and not felony: but where the primary intention of the offender is to burn only his own house (which is no felony), yet if in fact other houses are thereby burned, being adjoining and in such a situation as that the fire must in all probability reach them, the intent being unlawful, and the consequence immediately and necessarily flowing from the original act done, it is felony; for the law in such case implies malice: and generally, if the act be proved to have been done wilfully, it may be inferred to have been done maliciously, unless the contrary be proved; the absence of malice or spite to the owner is no answer to the charge. The offence may be committed, not only with regard to a dwelling house, but also with regard to all out-houses which are parcel of it, though not contiguous, or under the same roof.—Besides the common law, the various offences of burning houses and other property are now for the most part provided against by various statutes, under one of which a person unlawfully and maliciously setting fire to any dwelling house, any person being therein, may be adjudged to suffer death. *Roscoe's Digest; and Archbold's Criminal Pleading.*

CHAPTER IV.

OF FRAUDULENT OFFENCES AGAINST PROPERTY.

NOTE.—The special provisions which regard the trial and punishment of native ministerial officers of government charged with extortion, corruption, embezzlement, and offences of the like nature, have already been detailed in section 4, chapter 5, of the second book; see page 468: in the following sections are given the rules which respect other classes of persons guilty of such offences, and the reported cases.

SECTION I.

OF EMBEZZLEMENT AND BREACH OF TRUST.

Civil judge how to proceed if a ministerial officer is guilty of embezzlement.

* c. paras. 2548 et seq.

† c. para. 4469.

4320. Although a summary enquiry into cases of embezzlement by ministerial native officers of the civil court may be conducted by the judge under the provisions of sect. 7, Reg. XVIII. 1817,* yet that officer is by no enactment empowered to commit for trial before the sessions court for the offence; the rule of cl. 2, sect. 14, Reg. XVII. 1817† is applicable only to cases of perjuries committed by parties in a civil suit actually pending before a judicial authority. The duty of commitment is left to the magistrate, to whom the judge should transmit his proceedings, if grounds appear to exist for subjecting the accused to a criminal trial; and the magistrate in committing or releasing the person charged with the offence is to act on his own judgment on a fair consideration of the evidence adduced. Const. Nos. 518 and 691.

A peon making away with money entrusted to, or collected by him.

4321. The case of a peon, on the establishment of a government functionary, making away with money entrusted to, or collected by him, does not come within the meaning of Reg. II. 1813. Const. No. 1200.

Public servants embezzling or fraudulently disposing of property entrusted to them to be deemed to have feloniously stolen it.

4322. Every person employed in the public service of her majesty, and entrusted, by reason of such employment, with the receipt, custody or control of any chattel, money, or valuable security, who shall embezzle the same or any part thereof, or in any manner fraudulently apply, use, or dispose of the same, or any part thereof, for any purpose other than a purpose to which the same is applicable under the trust reposed in him, shall be deemed to have feloniously stolen the same. Act XIII. 1850, sect. 1.

Enumeration of some public servants to whom this Act is applicable.

4323. All official trustees, assignees, and receivers of money, by virtue of their several offices or appointments; all justices of the peace, coroners, and other persons receiving by virtue of their offices or appointments any fines, forfeitures, penalties, or other moneys, on behalf of her majesty; all sheriffs, under-sheriffs, bailiffs, officers, and other persons employed to levy money in execution of the judgment or order of any court, or in receiving any taxes or other moneys directed to be levied by any Regulation of the governor or governor in council of any presidency or place, or by any Act of the governor general of India in council; and also all subordinate officers and servants employed in the office or service of any of the persons hereinbefore enumerated, and entrusted with

money in the course of such employment, are declared to be persons employed in the public service within the meaning of this Act: but this special enumeration of some of the persons included in the general description of persons in the public service of her majesty shall not be taken to abridge the meaning of that general description. Act XIII. 1850, sect. 2.

4324. Every clerk or servant, who shall steal any chattel, money, or valuable security, belonging to or in the possession or power of his master, shall be punishable in the same manner as persons convicted of felonious stealing under this Act. Act XIII. 1850, sect. 4.

Clerks and servants stealing.

4325. Every clerk or servant, or any person employed for the purpose or in the capacity of a clerk or servant, who shall, by virtue of such employment, receive or take into his possession any chattel, money, or valuable security, for or in the name or on the account of his master, and who shall fraudulently embezzle the same or any part thereof, shall be deemed to have feloniously stolen the same from his master, although such chattel, money, or security, was not received into the possession of his master otherwise than by the actual possession of his clerk, servant, or other person so employed. Act XIII. 1850, sect. 5.

Clerks and others embezzling property received on master's account.

4326. Every member and officer of a trading corporation or company, and also every banker, merchant, factor, broker, attorney, or other agent, whether he be commonly so employed, or be employed as an agent in that instance only, and whether he act as such agent gratuitously or otherwise, to whom any chattel, money, or valuable security is entrusted for safe custody, or for any special purpose, and whether with or without any authority to sell, negotiate, pledge, or employ the same, but with an authority limited to some defined purpose as to the application of such money, chattel, or valuable security, or of any part thereof, or of the proceeds or of any part of the proceeds thereof, who shall fraudulently apply, use, or dispose of the same or any part of the proceeds thereof, for any purpose other than a purpose for which the same was entrusted to him, shall be deemed to have feloniously stolen the same. Act XIII. 1850, sect. 6.

Members of trading company, and agents fraudulently disposing of property entrusted to them.

4327. Every sub-agent, clerk, or servant of any such trading corporation or company, or of any banker, merchant, factor, broker, or other agent as aforesaid, who, knowing the purpose for which such chattel, money, or valuable security was entrusted to the corporation, company, person or persons, by whom he is employed, shall fraudulently apply, use, or dispose of the same, for any purpose other than a purpose for which the same was entrusted to his employer or employers, shall be deemed to have feloniously stolen the same, though he were not himself immediately employed or entrusted with the disposition thereof by the person entitled thereto. Act XIII. 1850, sect. 7.

Sub agents, clerks, or servants.

4328. Every person, possessed, or having the receipt, custody, or control of any chattel, money, or valuable security, in trust for any other person or persons, who shall embezzle the same or any part thereof, or in any manner fraudulently apply, use, or dispose of the same, for his own use or benefit, in breach of the trust reposed in him, shall be deemed to have feloniously stolen the same. Act XIII. 1850, sect. 8.

Embezzlement or fraudulent disposal of property by trustee.

Punishment for such offences.

4329. Every person convicted of having feloniously stolen any chattel, money, or valuable security under this Act, shall be liable to be transported out of the territories under the government of India for life, or to be imprisoned with or without labour for any term not exceeding seven years. Act XIII. 1850, sect. 9.

What are valuable securities.

4330. Every instrument entitling or shewing the title of any person to any share or interest in any public stock or fund of any country or state, or in any stock of any corporation or company, or for the transfer of any such share or interest, or for the receipt of any dividend or interest on any such share, or entitling or shewing the title to any deposit in any bank; and every warrant, order, or instrument for the payment of any money on any event, certain or contingent, or for the delivery or receipt of any goods, or merchandize, on any such event, is a valuable security within the meaning of this Act. Act XIII. 1850, sect. 10.

The same charge may contain any number of acts within six months. Proof of deficiency is evidence of offence.

4331. Any offender under this Act may be proceeded against on the same charge for any number of distinct acts of embezzlement or fraudulent application, use, or disposition as aforesaid, committed by him within six calendar months from the first to the last of such acts; and proof of a gross deficiency in the accounts of any such trustee or public servant, shall be evidence of the offence charged until such deficiency is otherwise explained. Act XIII. 1850, sect. 11.

This does not limit time for institution of suit.

4332. Sect. 11, Act XIII. 1850 contains no limitation as to the period within which a prosecution under that law can be instituted. Reports *L. P.* 1852, part 1, page 169. But the transactions to which the charge relates must not extend over a period exceeding six calendar months. Reports *L. P.* 1853, part 1, page 390.

Form of indictment if offence relates to money, or security for money.

4333. If the offence relates to money or to any bank note, bank post bill, banker's cheque, bill of exchange, promissory note, government paper, or other like security for the payment of money, it shall be enough in the indictment or charge to allege the embezzlement or fraudulent application, use, or disposition of money, without specifying any particular coin or valuable security; and such allegation shall, as far as regards the kind of property, be sustained, if the offender is proved to have embezzled or fraudulently applied, used, or disposed of any amount of money or any valuable security, though the particular kind of coin or valuable security, of which such amount was composed, shall not be proved. Act XIII. 1850, sect. 12.

Description of owner and offender, and of property, and purpose of trust.

4334. It shall not be necessary, in any proceeding against any offender under this Act, to declare the person to whom the property embezzled or fraudulently applied or disposed of belongs, otherwise than hereinafter provided, or to give any other description of it than by stating its general character according to the provisions of this Act; and if the offence be that of embezzlement or fraudulent application, use, or disposition, by a person in the public service of the crown, or of government, of property entrusted to him by reason of such employment, or part thereof, it shall be enough to state that the defendant was in such service, and that he received the property by reason of such employment, and embezzled the same, or part thereof, or fraudulently applied, used, or disposed of the same, as the case may be; and, if the case be one of fraudulent application, use, or disposition by any person not being such public servant but entrusted as aforesaid, it shall be enough to state that such per-

was entrusted with the property (describing its general character as aforesaid); and it shall be enough to state shortly the purpose of the trust, and that he fraudulently applied, used, or disposed of the same contrary to his duty in that behalf. Act XIII. 1850, sect. 13.

4335. Attention must be paid to the careful and proper framing of charges of embezzlement under sect. 13, Act XIII. 1850. The nature and purpose of the trust must be set forth in the charge; for it is important that the accused should be distinctly informed what trust he is charged with having abused. If the purpose of the trust is not mentioned in the charge, no conviction can follow. [Reports *L. P.* 1853, part 2, page 1003.] The distinction between embezzlement and theft being nice, in cases of embezzlement under the Act a count for theft arising out of the same act should be added, as a conviction for theft cannot be had on a charge of embezzlement only. Under sect. 14 of the Act, power is given to make any amendments in the charge that may be necessary, and under C. O. No. 70 of vol. 4,* session judges are competent to alter the charge from embezzlement to theft. But the insertion of both counts prevents delay, and enables the sudder court on appeal to deal with either charge. C. O. No. 73 of vol. 4. Reports *L. P.* 1851, page 1618.

Framing of charges; nature and purpose of trust to be set forth.

There should be one count for embezzlement and one count for theft.

* See para. 1058.

4336. Where the charge was for embezzlement of money belonging to government, and it was proved that the money in fact belonged to an individual, the trial was quashed. Reports *L. P.* 1854, part 2, page 62.

Fatal error in description of owner.

4337. The court before which any offender is tried under this Act shall have power upon the trial to make any amendments that may be necessary, by reason of any variance between the statements of the charge and the evidence, either in the description of the property, or of any person, or of any office, appointment, or employment, or of the purpose of the trust or otherwise, when in the opinion of the court the person charged cannot have been misled as to his defence by such imperfect or erroneous statement. Act XIII. 1850, sect. 14.

Power of court to amend description.

4338. To constitute the crime of embezzlement it is necessary to prove that the prisoner was the servant of the person whose money he appropriated, that he received it by virtue of that employment, and then feloniously embezzled it. Where a mohurir obtained from the treasurer 400 rupees on the false plea that he was authorized by the principal sudder ameen to draw his salary, the court held that it amounted to obtaining money under false pretences, not to embezzlement. In this case also it was observed by the court that the indictment was defective, as it did not specify the nature of the prisoner's service, and that he received the money by reason of such employment, as required by sect. 13, Act XIII. 1850; and that the omission to record the deposition of the principal sudder ameen, which was essential to the conviction of the prisoner, vitiated the proceedings altogether. The roobakaree of the principal sudder ameen stating that he did not give the prisoner permission to draw his salary, could not be admitted as legal evidence. The prisoner had a right to have the principal sudder ameen examined in his presence, and to cross-examine him upon it. Reports *L. P.* 1852, part 1, page 112.

Proof of trust is requisite to bring the case under the Act.

The verbal evidence of the officer entrusting is requisite

4339. Every offender under this Act may be tried and punished by any court of competent jurisdiction either in the place where he is in custody, or where he committed the offence. Act XIII. 1850, sect. 15.

Any court of competent jurisdiction may try.

Commitment necessary if theft of a similar amount must be committed.

4340. A magistrate is competent to dispose of certain cases of embezzlement under Act XIII. 1850, by which breaches of trust and embezzlement are made punishable as felonious stealing. It is only in cases, which, viewed as thefts, a magistrate may not consider within his cognizance, that commitment is necessary. Reports *L. P.* 1851, page 493.

Liability of offender to make good any loss.

4341. The punishment of any offender under this Act shall not be deemed to take away or lessen his liability or the liability of his sureties to make good any loss sustained by her majesty or any other person or persons by his misbehaviour or breach of trust. Act XIII. 1850, sect. 16.

Recovery of money does not bar punishment.

4342. Punishment for embezzlement is not barred by the realization from the surety of the prisoner of the whole amount embezzled. Reports *L. P.* 1855, part 1, page 606.

Punishment for rendering false accounts, though no embezzlement proved.

4343. Every person charged with a felonious breach of trust under this Act, who shall be proved to have knowingly made up or furnished false statements or accounts of the sums of money received or paid by him or entrusted to his care, or of the goods or balance of money in his custody or control, shall be liable to fine in the discretion of the court, although no actual embezzlement or fraudulent application, use, or disposition of trust moneys, chattels, or valuable securities, is proved against him, and in addition to such fine may be imprisoned, with or without labour, as the court shall adjudge, for any term not exceeding one year; but no person convicted of felonious breach of trust as aforesaid shall be punished also for making up false accounts in connection with the same breach of trust. Act XIII. 1850, sect. 17.

Mere loss or expenditure of the money does not always amount to embezzlement.

4344. In the case of a servant to whom money was advanced for the purposes of trade, where it was proved only that there was a balance against him according to his own accounts, and that he subsequently absconded, the court held that there was no evidence of a fraudulent breach of trust punishable under Act XIII. 1850; and that the fair presumption was that he had speculated injudiciously and suffered loss. Reports *L. P.* 1851, page 1481; and 1858, page 536. In a similar case the court held that a factor or agent could not be convicted of embezzlement, under the Act, upon proof of disbursements disallowed by his employer, unless there be evidence that the monies entrusted to him were not disbursed by him for his employer's purposes, but remained unaccounted for in his possession, so as to afford proof, according to the Act, of fraudulent misappropriation. Reports *L. P.* 1853, part 1, page 390.

Criminal trial not barred by a dispute regarding accounts;

4345. A criminal trial for embezzlement is not barred by the fact that the case is one of disputed accounts and that it is within the cognizance of the collector under sect. 20, Reg. VII. 1799. If the accusation against the defendant involves a criminal charge of embezzlement, the magistrate is bound to take judicial cognizance of it, although the defendant be also liable to a civil suit for the restoration of the sum alleged to have been embezzled by him. Letter of Nizamut Adawlut to Judge of 24-Pergunnahs No. 378, April 14, 1853. So, the institution of a summary suit under Reg. VII. 1799, for the recovery of the sum alleged to have been embezzled, does not prevent a criminal prosecution for embezzlement being sustained against the prisoner on the same transaction. Reports *L. P.* 1854, part 1 page 194.

or by summary suit.

4346. The mere absconding from service without rendering proper accounts is not punishable offence. Reports *L. P.* 1851, page 1481.

Absconding from service without accounts is not punishable.

4347. A person accused of embezzlement of tolls at a ghat on the Nuddea Rivers, was acquitted for want of sufficient proof that the tolls were ever paid to the prisoner, or were realized by any government officer with the prisoner's knowledge. N. A. R. vol. 6, page 232.

Proof of receipt of money.

4348. Where the prisoner, an abkaree darogah, was charged with embezzling a sum of money collected on account of government revenue from an abkaree pottadar and he pleaded that he received the sum in liquidation of money advanced to the account of the pottadar in preceding months; and it appeared that the prisoner had money transactions with the pottadar; and that such objectionable practice had the countenance if not the sanction of the head of the office, inasmuch as the system (proved to have prevailed) of realizing the government dues by deducting the amount of balance owing by the abkars from the salary of the prisoner, allowed the prisoner to do what he pleased with the rents; the court held that the prisoner could not be held criminally responsible for applying the sum to his private use. Reports *L. P.* 1852, part 1, page 17.

Precedents under the Act.

Acquittal on account of a reprehensible system of keeping accounts.

4349. The prisoners, boatmen, were entrusted with a boat-load of grain to be conveyed to a certain village. On arrival there they were directed to proceed to another place, but instead of so doing they carried it away and disposed of it, appropriating the proceeds. Under these circumstances they were convicted of breach of trust. The broker, by whose aid the grain was sold, was acquitted on the ground that he could not be convicted of the breach of a trust to which he was not a party. Reports *L. P.* 1855, part 1, page 616.

Fraudulent disposal of cargo by boatmen.

4350. A prisoner trading in partnership on borrowed capital with 4 others decamped with the common fund. On the prosecution of one of the partners for theft, the session judge convicted him under Act XIII. 1850. The sudder court acquitted him on the ground that a conviction of breach of trust could not be had on a charge of theft; but left it to the magistrate to re-commit on a charge of breach of trust. It was also held that the prisoner could not be charged with the theft of the money as belonging to the lender; and that he could not be prosecuted by his partner for theft of money in their joint possession. Reports *L. P.* 1855, part 1, page 639. But where a mahajun advanced a sum of money to four persons to trade with for themselves and him, and they were to repay him by a share of the profits, and one of them absconded with the money, which was not in his special custody; it was held that the mahajun was rightly made prosecutor; and that the prisoner was rightly convicted of theft. Reports *L. P.* 1856, part 1, page 928.

A partner absconding with common funds cannot be punished for theft.

4351. A moonsiff and kazee, convicted of receiving petitions of plaint on unstamped paper contrary to the regulations, and appropriating to his own use the value of the stamp paper on which those petitions should have been written, was sentenced to imprisonment for one year without labor, and a fine of 50 rupees commutable to 6 months' further imprisonment, and to be dismissed from his appointment: a person, employed as a mohurir in his office, convicted of being concerned in the same corrupt transactions, was sentenced to imprisonment for one year without labor. N. A. R. vol. 1, page 371.

Precedents before the Act.

Case of a moonsiff receiving petitions on plain paper, and appropriating the value of the stamps on which they should have been written.

4352. The treasurer of a collector's office was convicted of paying money out of the treasury under illegal and irregular orders of the collector, which he well knew were

Case of the treasurer of a collectorate paying money

on the illegal and fraudulent orders of the collector.

illegal, irregular, and fraudulent; the objection that he had not been confirmed in his office was not allowed, as he was *de facto* treasurer at the time of making the disbursements; and he was sentenced, although the collector himself had not been brought to trial, having effected his escape, to imprisonment without labor for 6 months, regard being had to the period during which he had already been in confinement. N. A. R. vol. 2, page 229. In a similar case the treasurer and acting treasurer were sentenced to imprisonment for one year, and the writer, for privy, for 6 months. N. A. R. vol. 6, page 156.

Cases of subordinate revenue officers appropriating collections made by themselves.

4353. A putwaree of a government village, whose salary had been stopped by order of the revenue authorities, appropriated to his own use part of the collections in his hands to an extent not exceeding the amount of salary withheld; this was held to be embezzlement, and he was sentenced to imprisonment for one year. N. A. R. vol. 5, page 114. And a tuhseeldar, convicted of applying to his private use a certain sum of money, after he had reported it to the treasurer as received on account of government, was declared guilty of a misdemeanor under Reg. II. 1813, though the zumeendar, by whom it was paid, acquiesced in the appropriation: the prisoner having been in confinement for 19 months, the imprisonment already undergone was deemed sufficient punishment for the offence, and he was discharged. N. A. R. vol. 3, page 45. But where a tuhseeldar realized the amount of a debt due to him by a zumcendar from the proceeds of the estate of his debtor, such proceeds not having been specially paid as revenue, and the estate not being under legal attachment in his hands, he was not considered guilty of embezzlement. N. A. R. vol. 3, page 37.

Case of a tuhseeldar deducting from the collections unauthorized loans made by him to individuals in balance.

4354. A tuhseeldar, convicted of having made unauthorized loans or advances to individuals in balance for one year, and supplying the deficiency in the public accounts by sums paid as revenue in the succeeding year, was held guilty of embezzlement, and sentenced to imprisonment for one year without labor. N. A. R. vol. 2, page 463.

Case of a surburakar under Reg. V. 1812.

4355. As a surburakar under Reg. V. 1812 holds his appointment under sunnud from the collector, and the estate whilst under attachment is under the management of government through their officers, the collector and surburakar, a criminal prosecution on the part of government for embezzlement of rents collected will lie; but the provisions of Reg. II. 1813 are not applicable to the case. N. A. R. vol. 6, page 42.

Case of the podar of a collectorate appropriating money held in deposit.

4356. A podar of a collectorate made away with a sum of money received by the collector for the purpose of being, and ordered by him to be, held in deposit: the money did not appear as an item in the memorandum of cash balance, &c., on a change of officers: the podar was held guilty of embezzlement of public money, and was sentenced to imprisonment for one year without labor. N. A. R. vol. 6, page 10.

Case of a gomashlah of a commercial resident appropriating advances.

4357. The gomashlah in the factory of a commercial resident was convicted of having received on a private account the sum of 2,500 rupees of the public money, and converted it to his own use, and was sentenced to imprisonment for 2 years; and a writer in the factory was sentenced as an accomplice to imprisonment for one year. N. A. R. vol. 2, page 277.

Case of a dak-moonshee making use of public money.

4358. A dak-moonshee, convicted of embezzlement, or rather of making use of the public money, to the extent of 25 rupees, was sentenced, adverting to the confinement and

disgrace which he had already undergone, to imprisonment for 6 months without labour. N. A. R. vol. 4, page 332.

4359. A cashkeeper on the establishment of a tuhseeldar, was convicted of having removed a sum of money from the public treasure chest without authority ; and, although he might not have intended eventually to embezzle the money, was held guilty of a misdemeanor within the provisions of Reg. II. 1813, and sentenced to imprisonment in the civil jail for one year. N. A. R. vol. 2, page 376.

Case of a cash-keeper removing public money, the intent to embezzle not proved.

4360. A servant attached to the imambarrah of Hooghly was convicted of embezzlement, in having fraudulently made away with five bags of money containing 5,000 rupees from the treasury of the trust-estate above mentioned, and substituted five bags of pice in lieu thereof, and was sentenced to imprisonment for five years without labour. N. A. R. vol. 4, page 166.

Case of a private servant guilty of embezzlement.

4361. A private servant, the mohurir in an indigo factory, converted to his own use a sum of money given to him by his employer to pay the expences of a criminal prosecution which the prisoner was about to institute ; and retained in his possession with the seal unbroken a letter containing a bank-note for 500 rupees, which he had been directed to put into the post office ; being committed on a charge of theft and retaining knowingly in his possession stolen property, he was found guilty of embezzlement, and sentenced to imprisonment for two years without labour. N. A. R. vol. 4, page 152.

Case of a private servant making use of money given to him to be employed in a particular manner.

4362. A private agent falsifying his accounts, and embezzling the money of his employer, was held guilty of a breach of trust only, more properly cognizable in the civil than in the criminal court. N. A. R. vol. 1, page 274. See paras. 4326 and 4343.

Private agent falsifying accounts held guilty of a breach of trust only.

SECTION II.

OF FRAUD.

4363. The obtaining possession of property by fraud, is not punishable as theft under the provisions of Reg. XII. 1818 ; if, in such case, the magistrate considers that the punishment which he is competent to award under his general powers is inadequate to the degree of criminality of the offence, he must commit the offender for trial before the sessions court. Where a prisoner was convicted before the magistrate of having fraudulently passed an unfinished and unsigned note of the India bank, purporting to be for one hundred rupees, and having thereby fraudulently obtained possession of cloths to the value of one hundred rupees, and the magistrate sentenced him to stripes and imprisonment with labor for two years ; the nizamat adawlut annulled his order as illegal, and directed him to commit the prisoner for trial before the session judge. Const. No. 684.

Precedents.

The fraudulently obtaining possession of property is not punishable as theft. If the magistrate considers such case beyond his general powers, he must commit it to the sessions.

4364. There is no law which authorizes criminal prosecutions for false and unfounded claims preferred in a civil court, although fines may be imposed on that account by civil courts in certain cases ; as *e. g.* sect. 12, Reg. III. 1793 ; sect. 3, Reg. XIII. 1796 ; and cl. 10, sect. 3, Reg. XXVI. 1814. Reports *L. P.* 1854, part 1, page 477.

To institute a false claim in a civil court does not constitute a fraud punishable in a criminal court.

The execution of two sales of the same estate to several persons, is a fraud.

4365. Where the prisoners were convicted of having executed two sales of the same estate to several persons, they were held guilty of fraud; but as they had been tried on a charge of forgery in having fraudulently antedated one of the deeds of sale to the prejudice of the first purchaser, they were discharged without punishment, the offence of which they were convicted being held distinct from that charged: at the same time it was declared that they were still liable to be tried for the fraud. N. A. R. vol. 2, page 50.

So, where the second engagement was a fictitious lease from the lessor to himself under another name.

4366. A zumeendar, shortly after having granted a lease of certain lands, executed a fictitious lease to himself in the name of another person with a view to oust the first lessee. This was held to be a fraud punishable by the criminal courts; and he was sentenced to pay a fine of 5,000 rupees. N. A. R. vol. 6, page 2.

Obtaining a frank on false pretences.

4367. A fraud on the post office, by means of procuring a frank on a false pretence, was held punishable by a session judge, under the discretionary power vested in him by cl. 7, sect. 2, Reg. LIII. 1803,* by a pecuniary fine commutable in default of payment to a short imprisonment. N. A. R. vol. 3, page 130.

* v. para. 1314.

The using false weights or measures is a misdemeanor.

4368. The offence of using weights and measures short of what is recognized as the current standard of the place or district, is punishable as a fraud by the magistrate under the general regulations. The magistrate, however, cannot prescribe a current standard of weight. Const. No. 1274.

False personation.

4369. False personation^(a) for one's own advantage is an offence under the Mahomedan law; no specific penalty is laid down for the offence, but the punishment is at the discretion of the hakim with a view to restrain the offender, respect being had to the circumstances of the offender, and the character of the offence, which is apparently in itself of a trivial nature. A prisoner, who claimed the raj and zumeendaree of Burdwan, was convicted of false personation for his own advantage, and was sentenced to pay a fine of 1000 rupees, and in default of payment to imprisonment in the zillah jail for six months. N. A. R. vol. 5, page 122. A prisoner convicted of falsely personating a collectorate peadah and uttering a forged parwana, was sentenced to imprisonment for 5 years with labor and irons. N. A. R. vol. 6, page 337. On conviction of personating an officer of the dacoity commissioner, seizing persons and extorting money, the prisoner was sentenced to 3 years' imprisonment with labor and irons. Reports *L. P.* 1856, part 2, page 110.

4370. Where the prisoner obtained food from the villagers under false pretences, but not under the pretence that he was in government employ, it was held that he was guilty of no offence punishable under the law. Reports *W. P.* 1856, part 1, page 212.

Case of a mokhtar attesting a confession with a false signature.

4371. A mokhtar, in attesting the confession of a person charged with a criminal offence, wrote a false name, in order to evade being sworn on the trial; and was sentenced on conviction to imprisonment for one year. N. A. R. vol. 5, page 20.

(a) The bare fact of personating another for the purpose of fraud, is no more than a cheat or misdemeanor at common law, and is punishable as such: in most cases of this kind, however, it is usual, where more than one are concerned in the offence, to proceed as for a conspiracy. *Russell and Roscoe.*

SECTION III.

OF EXTORTION, BRIBERY, AND CORRUPTION.

4372. Whenever the local government, or the head officer of a department or office under government, shall be of opinion that there are good grounds for making a public enquiry into the truth of any imputation of corruption, extortion, embezzlement, or other malversation committed at any time during tenure of office, by any ministerial or police officer, subject to the jurisdiction of the courts of the British government and subordinate to such government, or employed in such department or office, as the case may be, it shall be lawful for such government, or any such head officer as aforesaid, to prosecute such officer on the part of government in a criminal court, or to nominate some person to conduct such prosecution; and it shall also be lawful for such government, or head officer as aforesaid, in their or his discretion, to undertake on the part of government the prosecution in a criminal court of any such charges as aforesaid, which may be brought by an aggrieved private party against any such ministerial or police officer; and such prosecutions as aforesaid shall not be barred, or affected, by reason of the party prosecuted having ceased to be in the service of government at the time at which the charge may be brought against him. Act XXXII. 1852, sect. 1.

Local government, or head of department may prosecute subordinate officer on the part of government upon charges of corruption, &c.

or undertake prosecution brought by a private person.

Prosecution not barred by service having ceased;

4373. Provided always that no collector, magistrate, nor head of an office in the salt, abkaree, or customs department, under the grade of commissioner, shall commence or undertake a prosecution under this Act, until he shall have obtained the permission of the court, board, or officer to whom he is immediately subordinate, to institute the same. Act XXXII. 1852, sect. 2.

but must be sanctioned by controlling authority. See para. 2560.

4374. No collector, magistrate, judge, or other officer, who may prosecute any officer under this Act, or cause such prosecution to be instituted, or who may conduct any preliminary investigation into the conduct of such officer connected with such prosecution, nor any of his deputies, assistants, or subordinate officers, shall act as judge in any such prosecution. Act XXXII. 1852, sect. 3.

Officer engaged in prosecution, or his assistants, not to act as judge.

4375. If a police *tuhseeldar*, or a police *darogah*, or any officer under his authority, is guilty of corruption, extortion,^(a) or oppression, or commits any act repugnant to this regulation, he is liable to be committed by the magistrate to take his trial for the same before the sessions court, or to be prosecuted for damages in the civil court, at the option of the party injured. *Beng. Reg. XXII. 1793, sect. 22. Ben. Reg. XVII. 1795, sect. 20. Ced. Prov. Reg. XXXV. 1803, sect. 21. C. O. No. 35 of vol. 1.*

Police officers guilty of corruption, &c. may be prosecuted in the criminal or in the civil court.

(a) In English law, extortion is defined to be the taking of money by an officer by colour of his office, either where none at all is due, or not so much is due, or where it is not yet due. So the refusal of a public officer to perform the duties of his office until his fees have been paid, is extortion. So it is extortion for a ferryman to take more toll than is due by custom. So when the farmer of a market erected such a number of stalls that the market people had not space to sell their wares, it was held that the taking money from them for the use of the stalls was extortion. Several persons may be indicted jointly, if all are concerned; for in this offence there are no accessories, but all are principals. *Roscoe.*

Bribery and corruption on the part of native ministerial officers how punishable.

4376. Bribery and corruption on the part of native ministerial officers in the revenue [or any other] department, clearly amount to a misdemeanor according to the Mahomedan law, and are punishable as such by the session judge under the rule laid down in cl. 7, sect. 2, Reg. LIII. 1803; and by the magistrate to the extent of the powers vested in him by the regulations, when such punishment appears to him, on a consideration of all the circumstances of the case, to be adequate to the degree of criminality of the accused. Const. Nos. 237, and 1002.

Case of commitment when the magistrate was competent to pass final sentence.

4377. Where a police burkundaz was charged with taking a bribe of three rupees and was committed to take his trial for that offence, the nizamat adawlut held that the magistrate under the above rule was fully competent to pass the final sentence, and quashed the proceedings held before the session judge, as well as the commitment, directing the magistrate to dispose of the case himself. N. A. R. vol. 5, page 43.

In such cases prosecutor may be required to give security for his attendance.

4378. A magistrate is competent, whenever he may see reason to suspect any charge of corruption or extortion brought against his police officers to be false and unfounded, to call on the person preferring the charge to give security for his attendance until the final decision of the case. Const. No. 731.

If a charge of corruption is not proved, the magistrate may commit the accused for perjury, if he thinks proper.

4379. A charge of corruption made before a magistrate not having been established, the magistrate is authorized to commit the accuser to take his trial for perjury at the instance of the party accused, should he find sufficient grounds for so doing; and the commitment is not illegal, though made pending an appeal from the magistrate preferred by the original accuser to the sessions court.^(a) With a view however to avoid conflicting decisions, it was considered advisable to postpone the trial for perjury, until the appealed case was disposed of; the question of the prisoner's being innocent or guilty of the alleged perjury, resting on the truth or falsehood of the original charge. N. A. R. vol. 1, page 263.

The giving a bribe is a misdemeanor;

4380. The act of giving bribes to the amlah of a public officer for corrupt purposes, is clearly a misdemeanor both according to the English and Mahomedan law; and, though not specifically mentioned in the regulations, the individual committing it is unquestionably liable to a criminal prosecution. Const. No. 522.

and therefore the person administering it cannot be compelled to criminate himself.

4381. As the delivery of a bribe is a criminal act, and renders the person delivering it subject to a criminal prosecution as well as the receiver, a court of justice cannot compel a person to give evidence on oath touching a bribe, alleged to have been administered by himself. Const. No. 757. But he is competent to give such evidence against the person bribed. Reports *W. P.* 1855, part 2, page 81.

The sufferers in a case of extortion are competent to give evidence against the accused.

4382. The Mahomedan law rejects, in a case of extortion, the evidence of all persons who have contributed to the extortioner's demand; but this doctrine has been twice overruled, being considered by the nizamat adawlut absurd and inadmissible. N. A. R. vol. 2, page 341; and vol. 4, page 286.

(a) Under the present law, an appeal would not lie from the order of a magistrate dismissing the charge.

4383. Moonsiffs, sudder ameens, and principal sudder ameens, are liable (in addition to an action in the civil court) to a criminal prosecution for corruption, extortion, or other misdemeanor committed by them in the discharge of any part of their duty; and, on conviction before the sessions court, are subject to fine and imprisonment proportionate to the nature and circumstances of the case; but no moonsiff, sudder ameen, or principal sudder ameen, is liable to be prosecuted for want of form or for error in his proceedings or judgments; nor is any process to be issued against any such officer who is charged with corruption, extortion, or any oppressive and unwarranted act of authority, unless the judge is previously satisfied by sufficient evidence, that there is reason to believe the charge to be well founded. Reg. XXIII. 1814, sect. 10, cl. 2; and sect. 67. Reg. V. 1831, sect. 26, cl. 5.

Moonsiffs, sudder ameens, and principal sudder ameens, guilty of corruption, &c. how punishable; but not liable for error of judgment.

Prosecution not allowed without the sanction of the judge.

4384. Under the above rule a charge of bribery, corruption, or extortion against a moonsiff is cognizable in the first instance only by the civil judge, who, after the requisite preliminary enquiry, is either to give or refuse his assent to a criminal prosecution; which in the former case, should be conducted by the complainant before, and be disposed of by, the magistrate as in any other case of misdemeanor. But this is not to be considered as barring the right of the judge to direct the vakeel of government to prefer a charge of bribery, &c., against a moonsiff, and to conduct the criminal prosecution on the part of government, whenever he may deem this measure expedient for the ends of justice. The judge, however, must confine himself to the preliminary enquiry, and cannot direct the magistrate to commit the case to the sessions; and where a judge pursued a different course, the trial was quashed by the nizamat adawlut. Const. Nos. 781, and 1069. N. A. R. vol. 5, page 151.

Such cases are cognizable in the first instance only by the civil judge; he may make the case over to the magistrate, or direct the government vakeel to prosecute, but he cannot direct the commitment.

4385. If an ameen [appointed by a collector to make the partition of an estate] is convicted before the magistrate of the zillah of receiving, or allowing any other person to receive, directly or indirectly, any money or effects, or other property from the sharers, or from any person or persons on their behalf, in opposition to his oath [in which he declares that he will not directly or indirectly receive or allow any other person to receive any fee, present, or reward whatever, from any of the sharers or any persons on their behalf, on account of the division or any matter connected therewith; and that he will not derive any advantage or emolument from his appointment, excepting such as may be expressly allowed to him, and be authorized by this regulation], he is to be sentenced to pay a fine to government of three times the amount of the money or value of the property so received by him, or by any other person with his permission, and to imprisonment not exceeding six months; and all prosecutions before the magistrate under this clause are to be for a criminal misdemeanor at the instance of the collector of the district, through the vakeel of government. He is also liable to a suit for the same offence in the civil court. Reg. XIX. 1814, sect. 13, cl. 2.

Ameen appointed for partition of estate guilty of corruption.

Prosecution to be at the instance of the collector.

4386. If a native servant, or dependant, of any judge of a civil or criminal court of judicature, not being a public officer attached to the court, extorts, or receives, directly or indirectly, any money or other valuable consideration, under any pretence whatever, from any party or person, on account of any suit to be instituted, or that is depending or has

Native servant of a public officer extorting money on the plea of using his influence in regard to the decision of a case.

been decided in the court, he is to be committed as for a contempt of court, and to be punished by a fine equal to treble the sum of money extorted or received, or by imprisonment at the discretion of the court; and the judge is required to discharge such servant or dependant, and never to employ him directly or indirectly, in his public or private capacity. If the offender does not appeal against the decree within the limited time, or if an appeal does not lie from the decision, or if the decision is confirmed in appeal, the court by which the final decree is passed, is to transmit a copy of it to the government, who, in addition to the penalties or punishments specified in the decree, are, if there appear grounds for so doing, to declare the offender incapable of serving government in any capacity. *Beng. Reg. XIII. 1793, sect. 11. Ced. Prov. Reg. XII. 1803, sect. 14.*

This does not apply to the case of a private servant taking money to procure an official situation.

4387. Where an individual presented a petition to a magistrate in court, stating that he had paid 200 rupees to a private servant of his (the magistrate's) for an official situation, who had failed to procure the appointment or to refund the money,—the nizamat adawlut were of opinion that the charge should not be investigated and decided agreeably to the above rule, as its provisions were exclusively applicable to the case of a private servant employing his influence with his master in the decision of a suit pending before the court. The magistrate was directed to exercise his discretion in passing orders in such cases, the petitioner if dissatisfied being of course at liberty to appeal. *Const. No. 539.*

Native officers employed in the customs, making unauthorized collections, liable to dismissal, and to a criminal prosecution.

4388. Any native officer employed at the custom houses or chokees, who is proved to have levied any collections whatever, either as customs, duties, commission, fees, or under any other denomination, excepting such collections as are or may be authorized by this or any other regulation subsequently enacted, is of course liable to be dismissed from his employment under the rules provided in such cases by *Reg. V. 1804, and Reg. VIII. 1809.* Complaints against native officers employed under the collectors of customs for offences of this nature, are moreover to be considered cognizable by the magistrates; and any such native officer, on being convicted before a magistrate of having detained or stopped goods in any unauthorized manner; or of having exacted, under any plea or pretence whatever, a present, fee, or other consideration for the passage of goods or otherwise, in violation of the regulations of government, is to be deemed guilty of extortion, and is liable to be sentenced to pay a fine, not exceeding 200 rupees, and to imprisonment not exceeding 6 months, or to corporal punishment [now commutable to imprisonment for one year], according to the nature and circumstances of the case, and the condition in life of the offender; and if the fine so adjudged be not paid, it is to be commutable to a further period of imprisonment, not exceeding 6 months, as provided with respect to other sentences of the magistrate by *sect. 19, Reg. IX. 1807.* The party aggrieved is at the same time at liberty to prosecute the offender for damages in the dewanny adawlut. *Reg. IX. 1810, sect. 38.*

What punishment may be adjudged in certain cases

So, native persons, not employed in the customs, exacting customs, or duties.

4389. All native persons, not being officers employed by government in the collection of the government customs, or authorized by any regulation to collect customs or duties, who exact customs, or duties, of any denomination, on any pretence whatsoever, whether as principals or agents, are likewise to be deemed guilty of extortion; and on

conviction before a magistrate are liable to the penalties of fine and imprisonment to the same extent, and with the same qualification for commuting the fine to further imprisonment if it be not paid, as the magistrate is empowered to adjudge against native officers convicted of extortion under the preceding section: and the party aggrieved is in like manner also at liberty to prosecute the offender for damages in the dewanny adawlut: but nothing contained herein is to be construed to authorize the magistrate to inflict corporal punishment in any such case on any ground whatever. Reg. IX. 1810, sect. 39.

4390. This section applies only, to “government customs and duties” levied by unauthorized persons; and does not warrant the punishment of persons who have established a ghaut on a river and have collected tolls. But a complainant is at liberty to institute a charge of that nature; and if it be proved that the tolls were compulsorily taken, and without authority, the parties so levying them would be liable to punishment. Reports *L. P.* 1855, part 2, page 849.

This is restricted to authorized customs exacted by unauthorized persons.

Private exactions.

4391. The term “exact” in the above sections, must be construed to apply to the actual collection, and not to the mere demand of the illegal duties adverted to therein; the demand however is a misdemeanor under the regulations and Mahomedan law. Const. No. 76.

Meaning of the term “exact.”

4392. The rules relative to the abolition of the sayer duties, and the above provision, are not to be held applicable to any item of sewace collections or cess levied by malgoozars and others according to ancient custom, which has been or shall be sanctioned by a collector or other superior revenue authority, not being a tax on the transport, export, or import of goods or merchandise, or other tax or duty specifically prohibited: but after the settlement of any village or mahal has been made in the manner specified in sect. 9, Reg. VII. 1822, the rules and provisions aforesaid are applicable to all cesses and collections not sanctioned in the manner specified in that section. Reg. IX. 1825, sect. 9.

This is not applicable to the case of a zumeendar collecting a cess established by custom, and sanctioned by revenue officers.

4393. Thus, it was held that zumeendars could not be prohibited from levying “choongee,” a cess sanctioned by established custom, within the precincts of their estates.* Const. No. 973.

Example.

* *v. para.* 2457.

4394. Any custom house officer whatsoever, who demands or accepts any gratuity, not authorized by any existing regulation or order of government, in consideration of doing, or of omitting to do, any act in his official capacity, is to forfeit for every such offence the sum of 500 rupees; and any person who offers a bribe to any custom house officer in order to induce such officer to act in a manner inconsistent with his duty, is to forfeit a like sum; and these penalties are to be adjudged, on conviction before any magistrate or justice of the peace of the town, district, or place where the custom house is established, by such magistrate, and in default of payment any person so convicted is to be committed to the civil jail of the city or district until the fine be paid, or for a period not exceeding six months. Act XIV. 1836, sect. 13.

Custom house officers guilty of corruption, and persons offering bribes to such officers, liable to what punishment.

4395. The local authorities are not to interfere with ghaut manjees further than steadily to refuse to recognize their claims to make exactions, and promptly to punish every attempt illegally to enforce those claims, and especially the detention of boats without the

Ghaut manjees not to be recognized by the authorities.

consent of the owners, or other acts founded on pretended authority. The ghaut manjees are in fact agents for hiring boats, and of course are entitled to make a charge for their trouble; and therefore, beyond the above precautions, the suppression of the custom must be left to the mutual interests of the parties concerned in hiring and letting out boats. Const. No. 606.

Precedents.

Extortion—
by police officers ;

4396. A police darogah convicted of levying a general contribution from the village, in which the witnesses to a case of theft under enquiry resided, was sentenced to imprisonment without labour in the civil jail for one year; N. A. R. vol. 2, page 341. When two burkundazes were convicted of extorting money by violence from persons in their custody on an accusation of affray, one of them who had been convicted on another charge of extortion at the same sessions, and sentenced to two years' imprisonment, was sentenced to imprisonment for an additional period of one year; and the other, who appeared less culpable, to imprisonment for 6 months; N. A. R. vol. 4, page 286. Two prisoners, not in the service of government, convicted of extorting several sums of money from the villagers under colour of a fabricated order, purporting to have been issued from a police thana, were sentenced each to imprisonment for 2 years; N. A. R. vol. 5, page 112. A tulseeldar of a pergunnah and his jemadar, convicted of extorting bonds to a large amount from a zumeendar, and compelling him to grant a farm with a view of realizing the amount from the profits, were sentenced each to imprisonment for one year without labor in the civil jail, and to pay a fine to government of 1000 rupees, or in default of payment to twelve months' further imprisonment. N. A. R. vol. 3, page 37.

by persons not in
the service of go-
vernment ;

by a tulseeldar.

Police darogah al-
lowing a criminal
charge to be settled
by private adjust-
ment.

4397. A police darogah allowed a compromise of a case of theft to be effected by the relations of the parties concerned, and was afterwards charged with corruption therein; but his motive in so doing was not considered corrupt, as he had immediately reported the circumstances for the orders of the magistrato; and he was accordingly sentenced to be merely reprimanded for deviating from a specific rule in the regulations, which prohibits police officers from suffering accusations to be settled by private adjustment; [*see para.* 1524; but in some cases of theft and burglary the police officers may now allow such compromises to be made, *see para.* 2276]. N. A. R. vol. 1, page 180.

Corrupt receipt
of money.

4398. A person convicted of the corrupt receipt of money, while in office under a collector, in order to procure from the collector an order for the removal of a sezawul, was sentenced to be dismissed from office, and to be imprisoned in the criminal jail for 3 years; N. A. R. vol. 1, page 377. A prisoner was charged with the corrupt receipt of 1500 rupees, in having, while holding the situation of kotwal, by his private influence procured the office of darogah for an individual for that sum: the receipt of a portion of the sum in question was established, and the prisoner was unable to prove on what account; but he was acquitted of the charge by the nizamat adawlut, as it appeared that the money had been paid long after his resignation of and secession from office, and as there was no sufficient proof of a corrupt agreement. N. A. R. vol. 2, page 448.

SECTION IV.

OF EXTORTION BY DHURNA.

4399. On a complaint in writing being presented to a magistrate against any brahmin or brahmins, or against any other person or persons of whatever description, for sitting dhurna,^(a) the magistrate, upon oath being made to the truth of the information, is to issue a warrant or summons (as the case may require) under his seal and signature, for the apprehension, or appearance before him, of the person or persons thus complained against. On the accused being brought before the magistrate, he is to inquire into the circumstances of the charge, and to examine the accused and the complainant, and also such other persons (whose depositions are to be taken on oath [or solemn declaration]) as are stated to have any knowledge of the misdemeanor alleged, and to commit their respective depositions to writing: and, after this inquiry, if it appears to the magistrate that the misdemeanor charged was never committed, or that there is no ground to believe the accused to have been concerned in committing it, the magistrate is to cause him or them to be forthwith discharged, recording his reasons for the same. On the contrary, if it appears to the magistrate that the misdemeanor charged was actually committed, and that there are grounds for believing the accused to have been concerned in the commission of it, the magistrate is (except in the cases mentioned in sect. 7) to cause the accused to be committed to prison, or held to bail, according as in his discretion he judges proper, for trial before the sessions court; and is to bind over the complainant to appear and carry on the prosecution, and the witnesses to attend and give their evidence. Reg. VII. 1820, sect. 3.

Magistrate how to proceed on receiving a charge of dhurna.

4400. The trial of persons charged with dhurna, is to take place before the sessions court, in the same mode as is prescribed for other trials by the existing regulations; and in

Mode of trial before the sessions court.

(a) "The offence denominated dhurna implies, in its received acceptation, the practice of illegal duress by individuals for the extortion of money, or for the recovery of debts without authority from the civil magistrate; and also, without such authority, for retaining or recovering the possession of land, or for carrying any other point of real, imaginary, or pretended interest or right."—"The act of dhurna is a misdemeanor punishable in Mahomedan law, under the head of zulm, or oppression." *Preamble to Reg. VII. 1820.* In the preamble to Reg. XXI. 1795, the offence is thus described :—"On similar principles" (see the first portion of para. 3941) "these brahmins, to realize any claim or expectation, such as the recovery of a debt, or for the purpose of extorting some charitable donation, frequently proceed either with some offensive weapon, or with poison, to the door of another inhabitant of the same town or village, and take post there in the manner called dhurna; and it is understood, according to the received opinions on this subject, that they are to remain fasting in that place until their object be attained; and that it is equally incumbent on the party, who is the occasion of such brahmin's there sitting, to abstain from nourishment until the latter be satisfied. Until this is effected ingress and egress to and from his house are also more or less prevented; as, according to the received opinions, neither the one nor the other can be attempted, but at the risk of the brahmin's wounding himself with the weapon, or swallowing the powder or poison, with which he may have come provided. These brahmins however are frequently obliged to desist, and are removed from sitting dhurna by the officers of the courts of justice without any ill consequence resulting, it having been found by experience, that they seldom or ever attempt to commit suicide, or to wound themselves or others, after they are taken into the custody of government."

lieu of the vyavastha hitherto taken from the pundit, (a) the Mahomedan law officer of the sessions court is to write his futwa, declaring whether the offence charged is established or not against the accused. Reg. VII. 1820, sect. 4.

What penalties are adjudicable by the sessions court.

4401. On conviction of the offence of dhurna before a sessions court, the penalties adjudicable are to be as follow; namely, imprisonment in the civil jail for a term not exceeding one year, and fine not exceeding one thousand rupees, commutable if not paid to further imprisonment for a term not exceeding one year. Reg. VII. 1820, sect. 5.

Trials when referrible.

4402. Trials held before a sessions court in cases of dhurna, are referrible to the nizamat adawlut or not according to the rules applicable in other trials. Reg. VII. 1820, sect. 6.

In what cases magistrate may pass sentence, and to what extent.

4403. It is competent to the magistrates, in charges for the offence of dhurna, which they are of opinion, from the circumstances, do not require commitment to the sessions court, to hear the evidence against and for the accused; and, if they consider the accused to be convicted, to pass sentence of fine not exceeding two hundred rupees, commutable if not paid to imprisonment in the civil jail for a period not exceeding six months. Reg. VII. 1820, sect. 7.

Example of case in which the circumstances did not amount to dhurna.

4404. Where a person seated himself at the door of a modee's shop, distant a hundred paces from the house of the party whom he wished to compel to do him justice, and remained there without any nourishment, except sherbet, for 16 days, it was held that the circumstances did not constitute the offence of sitting dhurna. N. A. R. vol. 1, page 164.

4405. Where the prisoner took up a position at the door of the prosecutor's house, and forbad all egress and ingress, with the sole object of watching the premises until the other defendants arrived and forcibly ejected the prosecutor, it was held that this did not constitute the offence of dhurna as defined above. Reports IV. P. 1853, part 2, page 1427.

Precedents.

Cases which occurred before the enactment of the above provisions.

4406. A prisoner convicted of sitting dhurna, and extorting a present sum of 25 rupees, and a bond for 165 more, in payment of an alleged debt, was sentenced to forfeit all title to the claim for the realization of which the misdemeanor was committed, and to pay a fine to government of 100 rupees, or in default of payment to be imprisoned in the civil jail for the period of 6 months: the court directed the magistrate, in the event of the fine being paid, to give the prosecutor 25 rupees out of the amount, in reimbursement of the sum extorted from him; and in default of the payment of the fine, or of a sufficient part of it to provide for the repayment of the above sum, to inform the prosecutor that he was at liberty to bring a civil action for the recovery of the same: N. A. R. vol. 1, page 205. Where the prisoner, having come to the prosecutor's house with a razor in his hand, cut himself on the thigh, and sat down at the door declaring that he would not stir thence until the prosecutor gave him 25 rupees, and the prosecutor thereupon gave him the sum demanded; he was sentenced, in consideration of the period during which he had

(a) It was formerly considered as an offence solely against the Hindoo law; and therefore the pundits were required to give an exposition of the law of the *sastra*; but now, as quoted in the previous note, it is considered, as in the case of other crimes and misdemeanors, as an offence against Mahomedan law under the head of zulm.

already been in confinement (5 months), to be imprisoned in the civil jail for 3 months, and to pay a fine of 50 rupees to government, or in default to be imprisoned for a further period of 3 months: the same order was passed in regard to the reimbursement of the prosecutor from the fine, if paid, as in the last case: N. A. R. vol. 1, page 207. But both of these cases occurred before the enactment of Reg. VII. 1820.

4407. Where the prisoners, fakeers of a particular class called *sutrah shahi*, who go about beating sticks and consider themselves entitled to contributions from any bazar or fair they please to go to, were convicted of dhurna, and assisting in the suicide of one of their companions in furtherance thereof, they were sentenced, in consideration of their extreme ignorance and the other circumstances of the case, each to imprisonment for 5 years with labor: N. A. R. vol. 2, page 409. Where three prisoners were convicted of having, in concert with several others, sat in dhurna over an old man aged 65, and of having thereby deprived him of food and water, in consequence of which he died the following day, two of them were sentenced to imprisonment for 2 years, and a third, in consideration of his youth, to imprisonment for 6 months: N. A. R. vol. 3, page 202.

Case attended with homicide in assisting in the suicide of one of the persons sitting dhurna.

Case attended with homicide of the person over whom the prisoners were sitting dhurna.

CHAPTER V.

OF CATTLE TRESPASS.

4408. It shall be lawful for the cultivator or occupier of any land to seize or cause to be seized any cattle trespassing on such land, and doing damage to such land or any crop or produce thereon, and to convey them without unnecessary delay to the pound established for the village or township in which the land is situate. Village and other police officers, when called upon, shall give their aid to cultivators and occupiers making such seizures. Act III. 1857, sect. 2.

Cattle doing damage to land may be seized and impounded.

4409. Pounds shall be established at the thanas or district police stations, and at such other places as the magistrate, under the orders of the local government, may determine. The village or villages by which every pound is to be used shall be determined and notified by the magistrate. Act III. 1857, sect. 3.

Where pounds shall be established.

4410. The pounds shall be under the control of the magistrate of the district, and for each pound a pound-keeper shall be appointed, who shall keep such registers and furnish such returns as the local government shall direct. Act III. 1857, sect. 4.

Control and management of pounds.

4411. When cattle are brought to a pound, the pound-keeper shall enter in his register the number and description of the animals, the name and residence of the seizer, and the name and residence of the owner if known, and shall give a copy of the entry to the seizer. The pound-keeper shall take charge of and feed the cattle until disposed of as hereinafter directed. Act III. 1857, sect. 5.

Seizures to be registered.

Pound-keeper to take charge of and feed cattle.

Fines.

4412. For every head of cattle impounded as aforesaid, a fine shall be levied according to the following scale :—

	<i>Annas.</i>
Camel or Buffalo	8
Horse or Tatoo, Bull, Bullock, or Cow	4
Calf or Ass	2
Sheep or Goat	1

and no cattle shall be released by a pound-keeper without the payment of such fine unless the release be ordered by competent authority. Act III. 1857, sect. 6.

Procedure if owner appear and claim the cattle.

4413. If the owner appear and claim the cattle, they shall be delivered to him on payment of the prescribed fine together with the expense of feeding the cattle at such rates as may from time to time be fixed by the magistrate; and the owner, on taking back his cattle, shall sign a receipt for them in the register kept by the pound-keeper. A schedule of the fines and of the rates of charge for feeding cattle shall be stuck up in a conspicuous place on or near to every pound. Act III. 1857, sect. 7.

Procedure if cattle be not claimed within a specified time.

4414. If the cattle be not claimed within seven days from the date of their being impounded, the pound-keeper shall make his report to the darogah or district police officer, who shall stick up in a conspicuous part of the police office a notice containing a statement of the number and description of the cattle, the place where they were seized, and the place where they are impounded, and shall cause proclamation of the same to be made by beat of drum in the village, and at the market place, nearest to the place of seizure. If the cattle be not claimed within seven days from the date of the notice, they shall be sold by public auction by the darogah or district police officer or an officer of his establishment deputed for the purpose. Act III. 1857, sect. 8.

Procedure if owner appear and refuse or omit to pay the fines and expenses.

4415. If the owner appear, and refuse or omit to pay the fines and expenses, the cattle or as many of them as may be necessary, shall be sold by public auction for the recovery of such fines and expenses by the darogah or other officer as aforesaid; and the remaining cattle and the balance of the purchase money if any shall be delivered to the owner, together with an account showing the number of cattle seized, the time during which they have been impounded, the charge for fines and expenses, the number of cattle sold, the proceeds of sale, and the manner in which those proceeds have been disposed of; and the owner shall grant a receipt for the cattle delivered to him and for the balance of the purchase money paid to him (if any) according to such account. Provided always that, if a complaint against the seizure shall have been preferred under the provisions of section 14 of this Act, no sale shall be made until the case shall have been decided, nor otherwise than according to the order which may be passed in such case. Act III. 1857, sect. 9.

Sale to be stayed, if owner has complained to magistrate.

Police officers and pound-keepers not to purchase cattle at a sale under this Act.

Disposal of sale proceeds, fines, and expenses.

4416. Police officers and pound-keepers are prohibited from becoming, directly or indirectly, purchasers of any cattle at a sale under this Act. Act III. 1857, sect. 10.

4417. When cattle are sold under the provisions of this Act, the fines leviable and the expenses of feeding, together with the expenses of sale, if any, shall be deducted from the sale proceeds. The fines so recovered, as well as all fines received by the pound-keepers

under section 7, shall be transmitted to the magistrate by the darogah, or district police officer. The expenses of feeding realized by sale shall be paid over to the pound-keepers, who shall also retain and appropriate all sums received by them on account of such expenses under section 7. The surplus proceeds of the sale of unclaimed cattle shall be transmitted to the magistrate, who shall hold them in deposit for three months, and if no claim to them be preferred and established within that period, shall, at its expiry, dispose of them, as hereinafter provided. Act III. 1857, sect. 11.

4418. The sums received on account of fines and the unclaimed proceeds of the sale of unclaimed cattle shall form a fund which shall be available for the payment of any salaries, which may be allowed to pound-keepers under the orders of the local government or of expenses incurred for the construction and maintenance of pounds, or for any other purpose connected with the execution of this Act. Act III. 1857, sect. 12.

Fines and unclaimed proceeds of sales to form a fund for the payment of pound keepers, &c.

4419. Every person who shall forcibly oppose the seizure of cattle doing damage to land or to crops or other produce of land, or shall forcibly rescue the same after seizure either from a pound or from the seizer when conveying or about to convey them to a pound, shall be liable for such offence to imprisonment, with or without labor, for a period not exceeding six months, or to a fine not exceeding five hundred rupees, or to both. Offences under this section shall be dealt with by the police officers according to the provisions of section 25, Regulation XX. 1817. Act III. 1857, sect. 13.

Penalty for forcibly opposing the seizure of cattle or rescuing the same.

4420. Any person whose cattle shall have been seized and detained as doing damage to land or any crop or produce thereon, may prefer a complaint against the seizure, at any time within ten days from the date thereof, to the magistrate, or to any joint, deputy, or assistant magistrate, or other officer having criminal jurisdiction, authorized to receive and try charges without reference by the magistrate. The complaint may be either verbal, in which case the substance of it shall be taken down in writing by the magistrate or other officer as aforesaid, or written upon plain paper, and shall be preferred by the complainant in person, or by an agent personally acquainted with the circumstances. The magistrate or other officer as aforesaid, if on examination of the complainant or his agent he shall see reason to believe the complaint to be well founded, shall summon the party complained against, and shall proceed to make a summary enquiry into the case. If the seizure be adjudged illegal, the magistrate or other officer as aforesaid shall award to the complainant such damages, not exceeding in any case the sum of one hundred rupees, as he may deem to be a reasonable compensation for any loss or injury sustained from the unlawful seizure and detention, together with all expenses incurred by the complainant in procuring the release of the cattle; or, if the cattle have not been released, the magistrate or other officer as aforesaid, in addition to the award of damages, shall make an order for their release, and shall direct that the fines and expenses leviable under this Act shall be paid by the party who made the seizure. Moonsiffs and other judicial officers having original jurisdiction, and not invested with criminal powers, may be specially invested by the local government with the power of receiving and trying complaints under this section, and in the exercise

Owner may prefer complaint to magistrate within ten days from date of seizure of his cattle.

Procedure.

Damages for illegal seizure.

Moonsiffs and others may be invested with power to adjudicate under this section.

of such powers shall be subject to the same rules as assistants and other officers subordinate to the magistrate. Act III. 1857, sect. 14.

Impounding of cattle doing damage to roads, embankments, &c.

4421. Persons in charge of public roads, canals, embankments, and the like, may seize or cause to be seized any cattle doing damage to the sides or slopes of such roads, canals, embankments, and the like; and all the foregoing provisions of this Act shall be applicable to such seizures. Act III. 1857, sect. 15.

Impounding of stray cattle the owners of which are unknown.

4422. Village and other police officers shall convey to the pounds established under section 3 of this Act all cattle, the owners of which are unknown, found straying in any public road or place; and the provisions of this Act relative to the detention, release, and sale of cattle seized as trespassing and doing damage, shall be applicable to all cattle impounded as aforesaid. Act III. 1857, sect. 16.

Recovery of penalty for mischief committed by causing cattle to trespass.

4423. When any person commits mischief by causing cattle to trespass on any land, the penalty provided for such offence may be adjudged on the complaint of any person authorized to seize cattle under section 2 of this Act, or of any person who may have made advances for the cultivation of the land and delivery of the produce; and any fine which shall be so adjudged may be recovered by sale of the cattle by which the trespass was committed, or any portion of them, whether the cattle were seized in the act of trespassing or not, and whether such cattle are the property of the person convicted of the offence, or were only in his charge when the trespass was committed. Act III. 1857, sect. 17.

Penalty for damage caused to land or crops by pigs.

4424. Any person, being an owner or keeper of pigs, who, through neglect or otherwise, shall damage or cause or permit to be damaged any land or any crop or produce of land by allowing pigs to trespass thereon, shall be liable for such offence to a fine not exceeding ten rupees. All sums recovered under this and the last preceding section may be appropriated in whole or in part to compensate the complainant for damage proved to the satisfaction of the magistrate. Act III. 1857, sect. 18.

Application of fines.

Saving of right of parties to institute a suit for the recovery of damages in any competent court.

4425. Nothing contained in this Act shall be held to prohibit any person, whose crops or other produce of land shall have been damaged by trespass of cattle, from instituting a suit for the recovery of damages in any competent court. Provided that any compensation which may have been paid to any such person by order of the magistrate, shall be set off and deducted from any sum claimed by or awarded to him as damages in such suit. Act III. 1857, sect. 19.

Local government may exclude any district, from the operation of this Act.

4426. The local government, with the sanction of the governor general in council, may exclude from the operation of this Act any district or tract of country to which its provisions may be judged unsuitable. Act III. 1857, sect. 20.

Interpretation.

4427. In the construction of this Act, words importing the singular number shall include the plural, and words importing the plural number shall include the singular; words importing the masculine gender shall include females; the word "magistrate" shall include a joint magistrate, or other officer lawfully exercising the powers of a magistrate; the expression "darogah or district police officer" shall, in the North-Western Provinces of the Presidency of Fort William, include a tuhseeldar or naib tuhseeldar entrusted with police powers. Act III. 1857, sect. 21.

CHAPTER VI.

OF INDIGO CULTIVATION.

4428. Any person in whose favor a summary award has been passed [under this Regulation] for indigo plant the produce of any defined spot of land, is entitled to place a watch over the same, and to prevent the cutting and removal of the plant in any manner contrary to the stipulations of his agreement; and in the event of any attempt being made to cut or remove the plant, it is competent to the person holding the decree to apply to the nearest police darogah, and to claim from him the assistance of the police in preventing such removal; it is moreover the duty of the police officers, and of all other officers, on such a decree being exhibited, to aid the person in whose favor it has been passed to the utmost of their power. Reg. VI. 1823, sect. 4, cl. 1.

Persons holding a summary award for the produce of a defined spot of land may apply for the aid of the police to prevent the removal of the plant

4429. In the case of a ryot entering into an engagement with an indigo planter for cultivation of a particular spot of ground, and afterwards wishing to evade the fulfilment of that engagement, the planter is not justified in cultivating the land by means of his own servants, nor has he a right to demand the assistance of the police for the purpose of compelling the ryot to fulfil his contract. His only legal remedy in such case is in the civil court. Const. No. 385.

A planter cannot demand the aid of the police to compel a ryot to fulfil his contract for the cultivation of indigo.

4430. The magistrate can interfere in cases of indigo disputes, only when they are cognizable under Act IV. 1840; and in such cases he may depute his assistant to make a local investigation under the provisions of Reg. XI. 1824.* In disputes regarding indigo which do not come within the provisions of Act IV. 1840, the enquiry must be made and final decision passed in the civil court; to which court the magistrate must refer the parties in all cases in which he cannot act himself. Const. Nos. 652 and 661.

How far the magistrate can interfere in cases of indigo disputes.

* *v. paras 133 et seq.*

4431. Where A, a ryot, complains against C, an indigo planter, as likely to carry off indigo plant grown by him, and states himself to have received advances from, and to have grown the disputed plant for B, another indigo planter; and C declares that he also has made advances to A, and that A has cultivated the plant for him, which however A denies; in the trial of such a case under Act IV. 1840, A is to be considered in possession of the disputed crop, and is to be allowed to deliver the disputed plant to either B or C as he may think fit; and an order may be passed by the magistrate prohibiting C from attempting to take forcible possession. C will of course have his redress in the civil court, and if he timely take his measures there, supposing his claim to be in reality a better one than that of B, he might upon giving security, on a summary enquiry, be enabled to cut and carry away the disputed plant. Const. No. 1359.

The ryot who has cultivated the crop is in possession, and not the planter from whom he has received advances: and where the ryot has taken advances from two parties, they must all be referred to the civil court.

BOOK VII.

OF OFFENCES WHICH MAY AFFECT THE PERSON OR PROPERTY.

CHAPTER I.

OF CONSPIRACY.

Civil court cannot initiate proceedings before magistrate.

4432. Charges of fraud and conspiracy, brought to light in the course of judicial proceedings, must be prosecuted by the aggrieved party in the criminal court. The civil courts have no power of initiating the proceedings in such cases. *C. O. S. D. A. W. P.* No. 11, April 5, 1853.

Evidence of accomplices, not approvers, insufficient.

4433. A conviction for conspiracy cannot be had on the evidence of accomplices only unless admitted to pardon by government. Reports *W. P.* 1851, page 293.

In a case of conspiracy to defame, the person conspired against must appear as prosecutor.

4434. In an indictment for conspiring to defame by preferring a false charge of a heinous offence, the nizamat adawlut held it necessary that the person against whom the conspiracy was formed should appear as prosecutor; and, as the magistrate had made the government prosecutor without taking the evidence of the aggrieved party, and without any complaint on oath, the trial was annulled; and option was allowed to the person conspired against to stand forward as prosecutor. *N. A. R.* vol. 3, page 171. So, in Reports *W. P.* 1855, part 1, page 355. But the refusal of the person conspired against to prosecute was held insufficient to bar the trial, when the conspirators charged him with treason and the magistrate was induced to prosecute him on their representation. Reports *L. P.* 1858, page 177.

Exception.

Conspiring to excite discontent among molungees by false statements is punishable.

4435. On a trial for conspiracy, it was held that exciting discontent among the molungees employed in the salt department, by false statements to the prejudice of government, was a punishable offence: and the sentence by the circuit judge of one year's imprisonment was confirmed. *N. A. R.* vol. 3, page 232.

Case of conspiracy to effect murder.

4436. Where four prisoners were convicted of conspiring together to murder a person of property, in order that the property might devolve upon the heir-at-law, himself one of the prisoners, and of having perpetrated a violent assault upon him in pursuance of the conspiracy, they were all sentenced to imprisonment with labor in irons for 14 years. *N. A. R.* vol. 3, page 88.

4437. Two prisoners convicted of a conspiracy to charge the prosecutor falsely with having in his possession government treasure obtained by a robbery, were sentenced to stripes and imprisonment for 7 years. N. A. R. vol. 1, page 224.

Case of conspiracy to charge a man falsely with felony.

NOTE.

By English law a conspiracy is an agreement between two or more persons—1. Falsely to charge another with a crime punishable by law, either from a malicious or vindictive motive or feeling towards the party, or for the purpose of extorting money from him.—2. Wrongfully to injure or prejudice a third person, or any body of men, in any other manner.—3. To commit any offence punishable by law.—4. To do any act with intent to pervert the course of justice.—5. To effect a legal purpose with a corrupt intent, or by improper means.—6. Conspiracies or combinations by journeymen to raise their wages, &c.—Thus, *under the first head*, a conspiracy to charge a man falsely with treason, felony, misdemeanor, is indictable; but it is not an indictable offence for two or more persons to consult and agree to prosecute a person who is guilty, or against whom there are reasonable grounds of suspicion. *Under the second head*, a conspiracy to impose pretended wine upon a man, as and for true and good wine, in exchange for goods; a conspiracy by a female servant and a man whom she got to personate her master and marry her, in order to defraud her master's relations of a part of his property after his death; a conspiracy to injure a man in his trade or profession; a conspiracy to charge a man as the reputed father of a bastard; a conspiracy to raise the prices of the public funds by false rumours, as being a fraud upon the public; a conspiracy by persons to cause themselves to be reputed men of property, in order to defraud tradesmen; a conspiracy to defraud the public by issuing and negotiating bills in the name of a fictitious and pretended banking firm; a conspiracy by violence, threats, contrivance, or other sinister means, to procure the marriage of a pauper of one parish to a pauper of another, in order to charge one of the parishes with the maintenance of both; for these respectively it has been holden an indictment will lie. But an indictment will not lie for a conspiracy to kill game, or to commit any other mere civil trespass. If however the parties conspire to obtain money by false pretences of existing facts, it is no objection to the indictment for conspiracy, that the money was to be obtained through the medium of a contract. *Under the third head*, a conspiracy to commit a felony or misdemeanor is indictable. *Under the fourth head*, a conspiracy by certain justices of peace to certify that a highway was in repair, without knowing that the fact was true, was holden to be indictable. So, where several persons conspired to procure others to rob one of them, in order, by convicting the robber, to obtain the reward then given by statute in such case, and the party who accordingly committed the robbery was afterwards convicted and actually executed, these persons were indicted for the conspiracy and convicted.—The nature of the offence requires that more than one person should be concerned in its commission; one cannot be convicted of it, unless he has been indicted for conspiring with persons to the jurors unknown. And a man and his wife cannot be indicted for conspiring together alone, because they are in law one person. But one person alone may be tried for a conspiracy, provided the indictment charge him with conspiring with others who have not appeared, or who are since dead. An agreement by several to do a certain thing may be the subject of an indictment for conspiracy, though the same thing done separately by the several individuals, without any agreement between themselves, would not be illegal, as in the case of journeymen conspiring to raise their wages; for each may insist on his own wages being raised; but if several meet for the same purpose, it is illegal, and the parties may be indicted for a conspiracy. So, where several persons conspired to hiss at a theatre, Lord Mansfield held it indictable, though each might have hissed separately. If several persons concur in the act, it appears that they will be all guilty of a conspiracy, notwithstanding they were not previously acquainted with each other. The offence of conspiring consists in the unlawful agreement, although nothing be done in pursuance of it, for it is the conspiring which is the gist of the offence.—*Archbold and Roscoe*.

CHAPTER II.

OF PERJURY.

Definitions and conditions.

What constitutes perjury ;

4438. The crime of wilful perjury, subjecting the offender, on conviction, to the punishment stated in sect. 3 of this regulation, is hereby declared to be, giving intentionally and deliberately, before a court of judicature, magistrate, or other authorized public officer, a false deposition upon oath, or under a solemn declaration taken instead of an oath, relative to some judicial proceeding, civil or criminal, and upon a point material to the issue thereof. Reg. II. 1807, sect. 4, cl. 1.

and subornation of perjury.

4439. Subornation of perjury punishable under the preceding section of this regulation, is declared to be the crime of procuring or causing another person to commit the offence of perjury as above described. Reg. II. 1807, sect. 4, cl. 2.

Perjury may be committed in evidence on simple affirmation.

* See paras. 351 and 551.

4440. Any witness, admitted to give evidence on a simple affirmation under sects. 15 or 16, Act II. 1855,* wilfully giving false evidence is to be subject to be proceeded against in like manner, and to suffer, if convicted, the same punishment as if he had been sworn and had committed wilful and corrupt perjury. The indictment or charge is to be varied so as to meet the case. Act II. 1855, sect. 17.

It may be perjury though the false deposition does not relate to any judicial proceedings ;

4441. In addition to the rules contained in sections 26, 30, and 33, Reg. XII. 1817 [regarding putwarces, para. 4461], it is hereby declared, that any person convicted before a sessions court, or the nizamat adawlut, of having given intentionally and deliberately a false deposition upon oath, or under a solemn declaration taken instead of an oath, before a public officer authorized to take the same, is to be deemed guilty of wilful perjury, and liable to the punishment for that offence, declared in sect. 9 of this regulation, although the deposition so taken does not relate to any judicial proceeding, provided it clearly appears to have been given falsely and criminally on a point material to the case in which the deposition has been taken. Reg. XVII. 1817, sect. 13, cl. 1.

and the procuring such false deposition is subornation of perjury.

4442. Any person convicted before a sessions court, or the nizamat adawlut, of having procured or caused another to commit the offence described in the above clause, is to be deemed guilty of subornation of perjury: and is to be liable to the punishment of that offence, declared in sect. 9 of this regulation. Reg. XVII. 1817, sect. 13, cl. 2.

It is perjury, if a witness wilfully gives two statements directly at variance with each other, on a point material to the issue.

4443. The mere fact of a witness having wilfully given two statements directly at variance with each other, on a point material to the issue of the case in which he gives his testimony, must be held to be perjury; and the deponent on conviction is punishable accordingly. This dictum is in accordance with the Mahomedan law; and supersedes the precedent in N. A. R. vol. 1, page 282, which ruled that it is essential to a conviction of perjury in such case, that the truth of one of the two contradictory statements should be satisfactorily established. C. O. No. 126 of vol. 3.

4444. And a conviction of perjury may be had, without reference to the truth or falsehood of the deposition made; as in a case of false personation. N. A. R. vol. 4, page 260; and vol. 5, page 144.

So, it may be, though the truth of the case does not appear.

4445. When a witness first denied his relationship to a certain person, and afterwards in the same deposition admitted it, and he was committed to the sessions for making two contradictory statements on oath, the nizamat adawlut quashed the commitment and directed that an indictment should be prepared against the prisoner for his first designedly false statement. It is only when there is no means of ascertaining which of two statements is true, or when it may be doubtful whether the true one can be clearly established, that a charge of contradiction in the statements should be drawn, either as the sole or second count. Reports *L. P.* 1854, part 1, page 338.

But the commitment should not be made for the contradiction, unless the truth be doubtful, or difficult of proof.

4446. But in such case it must be shown that the point involved in the contradiction is material to the issue, and that the prisoner manifested a deliberate intention to deceive the court. Reports *L. P.* 1854, part 2, page 476. Or to defeat justice. Reports *L. P.* 1856, part 1, page 851. The fact of the contradiction must be so plain and manifest as not to leave any room for doubting the deliberate and wilful character of the perjury. Reports *W. P.* 1853, part 2, pages 1322 and 1333; and *L. P.* 1855, part 2, page 772. And must be patent on the statements themselves; as, to swear an offence against A, and after an interval of months or years to be unable to recognize A, is not such a contradiction as necessarily involves perjury. Reports *L. P.* 1854, part 2, page 391; 1855, part 2, page 325; and *W. P.* 1854, part 2, page 231.(a).

Contradiction must be on a material point,

and manifest

on the statements themselves.

4447. A person producing in court a false witness through a vakeel, though himself absent, is guilty of subornation of perjury. N. A. R. vol. 5, page 67. Reports *W. P.* 1853, part 1, page 223.

Subornation may be committed by an absent person.

4448. It is frequently difficult to discriminate between perjury and wilful prevarication in a witness; and as much must necessarily depend upon the particular circumstances of each case, the nizamat adawlut did not consider it possible to lay down any general rule on the subject. But if the prevarication, though wilful and designed, does not amount to perjury, it is not punishable as a contempt of court.* Const. No. 1177. C. O. No. 128 of vol. 3. A mere equivocation or suppression of part of the truth, however morally culpable, is not punishable as wilful perjury. Reports *W. P.* 1855, part 2, page 492.

Difference between perjury and wilful prevarication.

* v. para. 1519.

4449. There can be no charge of perjury on a mere averment of want of recollection; for it is plainly impossible to establish against a party, by legal proof, that he recollected

Defect in recollection not perjury.

(a) It has also been ruled (Reports *L. P.* 1854, part 2, page 773) that the two contradictory statements, on which a charge of perjury is based, must have been made in the same case, for otherwise it is impossible to say in which the false testimony was given on a point material to the issue. But this appears questionable as a general rule; for where the fact, regarding which the two contradictory statements have been made, is material to the issue in each case, the perjury is complete, if the mere contradiction on a point material to the issue is sufficient proof of the perjury. See N. A. R. vol 2, page 202, quoted in para. 4519.

anything, which he has stated on his own part that he did not recollect.^(a) Reports *L. P.* 1851, page 599.

That part of the false deposition upon which the perjury is assigned, must be material to the matter then under consideration.

4450. The perjury must refer to a point material to the issue of the case. Thus, where the prisoner first denied on oath, and after five days confessed, that he had had a meeting and conversation with a darogah suspected of levying contributions in his village, but there was no evidence to show the nature of the conversation, it was held that the false swearing did not amount to perjury according to the intent of the definition given above. *N. A. R.* vol. 2, page 314. So, where the prisoners deposed falsely on oath, in a trial for robbery, as to their relationship to each other, the point was held immaterial to the issue of the trial, because their testimony would have been admissible, and might have been sufficient to procure the conviction of the prisoner tried, even had they deposed truly as to that point.^(b) *N. A. R.* vol. 4, page 10. So, although a column is devoted in the calendar of commitment to the witnesses to the apprehension, it does not necessarily follow that evidence as to the time, place, and manner of apprehension, is in every case material to the issue; and, where it was not so material, the prisoner was discharged. Reports *W. P.* 1855, part 2, page 214. But it appears to be sufficient if the perjury bears only a collateral reference to the point at issue. Thus, where a witness for the defence, in a trial for theft, swore falsely as to the degree of relationship in which he stood to the prisoner, with a view of inducing the court to give readier credit to the substantial part of his evidence, he was convicted of perjury, and sentenced to imprisonment for one year. *N. A. R.* vol. 4, page 259. So, where a witness deposed falsely as to the evidence which he had given in a previous suit, in order to conceal that his testimony

But it is sufficient if it is given with a view of inducing the court to give readier credit to the substantial part of the evidence.

(a) In English law it appears that "a man may be indicted for perjury, in swearing that he *believes* a fact to be true, which he must know to be false." *Archbold*. And *Starkie* observes, "It has been said, that a witness must not be examined in chief as to his *belief* or *persuasion*, but only as to his knowledge of the fact, since judgment must be given *secundum allegata et probata*; and a man cannot be indicted for perjury who falsely swears as to his persuasion or belief. As far as regards mere belief or persuasion, which does not rest upon a sufficient or legal foundation, this position is *correct*; as where a man believes a fact to be true, merely because he has *heard* it said to be so; but with respect to persuasion or belief, as founded on facts within the actual knowledge of the witness, the position is not true. On questions of identity of persons, and of handwriting, it is *every-day's* practice for witnesses to swear that they believe the person to be the same, or the handwriting to be that of a particular individual, although they will not swear positively; and the degree of credit to be attached to the evidence is a question for the jury. And with regard to the second objection, it has been decided that a man who falsely swears that he thinks or believes, may be indicted for perjury." *Starkie*, 4th edition, page 172.

In this case, Mr. Ross, one of the judges of the nizamat adawlut, observed; "Had there been proof adduced to establish that the false depositions, for which the prisoners were tried, were given before the magistrate or other officer legally authorized to examine them, I should have recorded my opinion for convicting them of giving 'a false deposition in a court of justice', and for sentencing them to two years' imprisonment with labor. A false deposition before a court of justice, although upon a point not material to the issue of the case under examination, is a high misdemeanor, and punishable by the Mahomedan law." But Mr. Leicester, another of the judges, did not concur in this doctrine: "it is perjury or nothing; and if not perjury under our regulations, we cannot make another species of perjury, and punish it as a misdemeanor under the Mahomedan law. The regulation should be modified, and perjury defined as it now is in England."

had then been rejected, he was held guilty of perjury, and sentenced to imprisonment for 6 months; N. A. R. vol. 5, page 110.* But the assumption of a false name does not amount to perjury, where such assumption does not induce the court to attach greater credit to the evidence. Reports *L. P.* 1855, part 1, page 507. It is however sufficient if he hoped to add to the credibility of his statement.^(a) Reports *L. P.* 1857, part 2, pages 284 and 451. Reports *W. P.* 1854, part 1, pages 246 and 295; and part 2, page 1. And the question is whether the evidence was material at the time it was given, for *e. g.* the admission of guilt by the defendant does not render the evidence of a witness immaterial to the issue of the case against that defendant so as to relieve the witness from the consequences of perjury. Reports *W. P.* 1855, part 2, page 680.

* See other cases mentioned in para. 4517.

4451. There must be a fraudulent or malicious intention. Thus, where the prisoners presented a petition to the magistrate for the recovery of a bullock unjustly detained by another person, and swore to their property in the bullock although in fact it belonged to a relation, to whom they restored it immediately on recovery, the absence of any fraudulent or malicious intention was considered sufficient to bar any punishment. N. A. R. vol. 1, page 222. But perjury is not extenuated by the circumstance of its being employed to benefit certain parties without detriment to any one. Thus, the nizamat adawlut refused to mitigate the minimum sentence of three years' imprisonment passed on certain persons, who swore falsely to the present existence of a woman, for the culpable homicide of whom other prisoners had been previously convicted, with a view to obtain the release of the latter. N. A. R. vol. 6, page 12. So, where a prisoner personated another, and swore falsely that he was present at an affray, and it appeared that his sole motive for so doing was to oblige the person whom he personated, he was convicted of perjury and sentenced to three months' imprisonment. N. A. R. vol. 2, page 204.

There must be a fraudulent or malicious intention.

But it is no excuse that the perjury will benefit certain parties without detriment to any one.

4452. Where the prisoner denied on oath the execution of a vakalutnamah, which he was proved to have executed, it was held that the offence did not come within the legal definition of perjury. But it does not appear in the report whether this was held, because the false statement was not injurious to any one, or because it was not made voluntarily. N. A. R. vol. 4, page 7.

Examples of cases, in which the false deposition did not amount to perjury.

4453. A private agent falsified his accounts to conceal the embezzlement of his employer's property, and swore to the truth of those accounts; it was held that he was not guilty of the legal crime of perjury. N. A. R. vol. 1, page 274.

(a) Where a person was charged with perjury in having falsely denied that she had made a certain statement before the darogah, she was acquitted because the fact of her having made such statement was not material to the issue of the case, however material the matter contained in the statement might have been. Reports *L. P.* 1854, part 1, page 404. But in a similar case the prisoner was convicted of perjury on the ground that the false denial was made with the intent of adding credit to the subsequent deposition, and in this way as affecting the credibility of the witness it was material to the issue of the case then pending before the magistrate. Reports *L. P.* 1854, part 2, page 48.

4454. Where the prisoners swore to a signature as that of an individual, who it appeared had written only one letter of his name, and had then given the pen to his brother to complete the signature, as he was not able himself to write well, the court held, in concurrence with the futwa, that it was merely a lax statement, without sufficient explanation, and not a deliberate falsehood. N. A. R. vol. 3, page 217.

The wilful concealment of bond debts by an insolvent debtor is perjury.

4455. The wilful concealment of bond debts due to an insolvent debtor examined on oath before the civil court under the rules contained in sect. 11, Reg. II. 1806, is punishable on conviction as wilful perjury under cl. 1, sect. 13, Reg. XVII. 1817. Const. No. 1086.

The oath must be administered in a place in which the administering officer is competent to hold his court.

4456. A deposition taken on oath in the private dwelling of a sudder ameen, distant nearly three miles from the court house, is illegal and cannot be received; consequently the deponent cannot be considered liable to the penalties of perjury if such deposition is false. Const. No. 627.

The oath must be taken before a competent court of jurisdiction :

4457. The oath or affirmation must be taken before a public officer authorized to administer the same. Thus, it was held that a prosecution for perjury could not legally be maintained against a person, who had sworn falsely in the investigation of a claim to a pension under Reg. XXIV. 1803, because there is no enactment which authorizes the collector to examine parties on oath in such cases. Const. No. 1106. So, where the collector is examining witnesses with reference to an application for a mutation of names in the register. Reports *W. P.* 1853, part 1, page 84. So, where the collector is attesting a mokhtarnamah. Reports *L. P.* 1854, part 1, page 228. So, where the oath was administered by a military court of enquiry, which has no power to examine upon oath. N. A. R. vol. 3, page 171. So, where the oath was administered by a police mohurir at the thana while the darogah was present at that place, because the mohurir under Reg. XX. 1817 has no power to administer oaths except in the absence of the darogah, and the latter has no authority to delegate his power of administering oaths when present. N. A. R. vol. 1, page 386. So, where the police darogah examined a witness upon oath, which is prohibited by cl. 1, sect. 13, Reg. XX. 1817. Reports *L. P.* 1851, page 1010.

and in a case in which the court can examine on oath.

4458. A party to a suit under Act IV. 1840 cannot be examined on oath; he cannot therefore be convicted of perjury for any false statement made on such examination. N. A. R. vol. 6, page 93. Reports *W. P.* 1853, part 2, page 1111.

Where sufficient if oath is administered by mohurir of civil court.

4459. So, the prosecution was disallowed, where the oath was administered by a mohurir of a civil court not duly authorized by the judge to take the examination of the witness. N. A. R. vol. 3, page 212. And it is not sufficient that the power to take the examination was delegated to such officer after the deposition had been committed to writing. N. A. R. vol. 1, page 326. The authority for exercising the power so delegated must be proved on the trial to make the proceedings complete. N. A. R. vol. 3, page 157. But a false deposition will amount to perjury, if the ministerial officer is duly authorized to take the deposition, for in such case the power to administer the oath is implied. N. A. R. vol. 2, page 202.

4460. Perjury cannot be held against a Christian on evidence taken under the solemn declaration prescribed by Act. V. 1840, which has reference only to Hindus and Mahomedans. Reports *W. P.* 1855, part 1, page 449.

Oath must be in legal form.

4461. Wherever it has been the intention of the legislature, that officers employed in the revenue department shall have power to examine parties on oath, or solemn declaration, in cases pending before them either judicially or otherwise; and that the legal penalties for perjury should be applicable to such parties in the event of their giving deliberately and intentionally a false deposition on oath, or under a solemn declaration taken instead of an oath; and the penalties for subornation of perjury applicable to persons causing or procuring such persons to commit perjury; an express provision to that effect has been inserted in the regulations. Const. No. 1106. Thus it is so enacted, in the case of a putwaree examined before a collector, or the officer of a collector duly empowered to take his examination, relative to the lands, produce, collections, and charges, of the village or villages to which he belongs; and in the case of any native agent, employed by a proprietor or farmer of land in the management of his estate or farm, or in keeping the accounts relating to it, when so examined; and in the case of a proprietor or farmer of land, or his gomastah or other officer, where no putwaree is appointed, when so examined; Reg. XII. 1817, sects. 26, 30, and 33: and Reg. I. 1801, sect. 8. So, in the case of witnesses examined by a collector or other officer exercising the powers of a collector, in resumption cases: Reg. II. 1819, sect. 19: or in settlement cases: Reg. VII. 1822, sect. 19, cl. 2. So, in regard to stamps, in the case of witnesses examined by the board or other controlling authority, or by the collectors of land revenue or other officers vested with the local charge of this branch of revenue: Reg. X. 1829, sect. 19. So, in the case of witnesses examined by the collector or other officer in charge of the abkaree mahal: Reg. XIII. 1816, sects. 86 and 88; and Reg. VII. 1824, sect. 16, cl. 4. So, in the case of witnesses examined by a salt agent or superintending officer of chokees: Reg. X. 1819, sects. 103 and 106; and Act XXIX. 1838, sect. 26. So, in the case of witnesses examined by a collector of the land revenue or customs, or by an agent for the provision of salt or opium, respecting the conduct of any native officer employed under them respectively: Reg. VIII. 1809, sect. 10, cl. 5. So, in the case of witnesses examined before arbitrators appointed to ascertain and determine the value of property required for public purposes: Act VI. 1857, sect. 19. So, in the case of persons who, in making any declaration under the authority of this Act (regarding the importation of rum and rum shrub), knowingly affirm an untruth: Act VI. 1841, sect. 9. Similar provisions have been made in other cases.

How far officers employed in the revenue department have the power of administering oaths.

4462. The majority of the nizamat adawlut held that a false deposition on oath taken by a native ministerial officer in the presence of the magistrate (in the manner prescribed in C. O. No. 58 of vol. 1*) relative to some judicial proceeding, and upon a point material to the issue thereof, is perjury. Const. No. 656. It must be proved that the oath was administered before the deposition was given. Reports *W. P.* 1853, part 2, page 1492; and 1855, part 1, page 770. But if the false statement is retracted by the witness before the

A deposition taken in the presence of the magistrate is not complete until attested.

* *v. para.* 511.

deposition has been attested by the magistrate, it does not amount to perjury. N. A. R. vol. 2, page 154; vol. 5, page 70; vol. 6, page 282.

The examination on oath must be necessary.

4463. The prisoner preferred a charge of theft before the darogah, but could not prove it, and the magistrate sent for him and examined him on oath, when he said that he had no charge to prefer against any person. Held that, as he made no complaint, his examination on oath was unnecessary, and perjury could not be assigned on statements contained therein. Reports *L. P.* 1855, part 2, page 564. So, it was held in the case of Baboolah Khan by a majority of three judges out of five, that, if the magistrate sends for a person who has laid a complaint before the darogah, which complaint has not been proved, and such person declines to repeat the complaint, he cannot be required to give a deposition on oath, in which he must be compelled to adhere to a statement to which he is unwilling to adhere, or to subject himself by abandoning his first statement to be charged with perjury. If however he willingly repeats the charge on oath, the enquiry becomes judicial, and he would be liable for perjury committed therein.^(a) Reports *L. P.* 1856, part 2, page 993.

Punishment has been remitted when the oath ought not to have been administered;

4464. Punishment has been remitted where the oath ought not to have been administered. Thus, where a person was examined on oath with respect to criminal acts, in which he was implicated as a party, and when therefore he was reduced to the alternative of giving false evidence or of criminating himself, he was discharged without punishment. N. A. R. vol. 1, pages 138 and 349. And on discovery that a witness has deposed falsely he must not be invited to contradict upon oath his former statement, and then be committed for perjury on the two contradictory statements. But he may be committed for the false statement in the first deposition, if other proof can be adduced to its falsehood. N. A. R. vol. 2, page 180; and vol. 6, page 91. Reports *L. P.* 1855, part 1, pages 195, 207, and 228. So, where a person wished to withdraw a charge which he had made on oath at the thana, and the darogah, before whom the first deposition had been made, recorded the retraction also upon oath, it was held that the commitment for perjury on the two contradictory statements could not be sustained because the darogah had no power to administer the second oath. Reports *L. P.* 1854, part 1, page 446. So, where it appeared that one person had instigated another to personate his brother, and they were examined as to the identity on oath, and were afterwards committed and convicted of perjury and subornation of perjury on their depositions then taken, the court held that it was irregular to take their evidence on oath instead of at once putting them on their defence; and the conviction of perjury was set aside. Reports *L. P.* 1851, page 973. But, where the prisoner came forward of his own accord and acknowledged that he had misstated facts in his previous deposition, and represented in a petition what had really taken place, and his evidence was then again taken on solemn affirmation, it was held that such course was regular,

(a) The report of this case contains elaborate arguments in regard to the power of a magistrate to initiate criminal charges, and the conditions necessary to constitute perjury.

and he was convicted of perjury on the contradiction in the two statements. Reports *L. P.* 1852, part 2, page 748. So, where the deponent comes forward a second time voluntarily, and the officer taking the second deposition is not aware that it will contradict the first. Reports *L. P.* 1853, part 1, page 7; and 1856, part 2, page 357. But such voluntary correction of a misstatement may be accepted as a cause for mitigating punishment. Reports *W. P.* 1854, part 1, page 13. Where the magistrate in the investigation of a charge of assault caused some of the bystanders to be mixed with the defendants, and then desired the witnesses for the plaintiff to point out the persons concerned in the assault, and they accordingly pointed out several persons wholly unconcerned in the case, and were on that committed for perjury; the nizamat adawlut would not give their sanction to the artifice by which the witnesses were entrapped into the offence, and directed their discharge without punishment. *N. A. R.* vol. 2, page 321. Reports *L. P.* 1857, part 1, page 595; and *W. P.* 1854, part 1, pages 148 and 540. So, where the prisoners brought a charge of murder before the police, and the magistrate, having satisfied himself from the surgeon's report and other evidence that murder had not been committed, sent for the prisoners and put them on their oath, and they deposed to the same effect, it was held that the conviction of perjury could not stand, because the prisoners had been led unwarily to commit themselves. Reports *L. P.* 1855, part 2, page 180.

and where the offender was entrapped into the commission of the offence;

4465. Similarly all punishment was remitted, when the perjury was established by two contradictory statements, and it appeared that the second statement was the result of fear in consequence of the detention of the prisoner in hajut. Reports *L. P.* 1855, part 2, page 810. So, where the prisoner was induced to make the first statement by threats held out by the police. Reports *L. P.* 1854, part 2, page 288. The same ruling has been applied to perjuries committed under the influence of intimidation and fear of parties interested; Reports *L. P.* 1854, part 2, page 83; 1855, part 1, page 400; but it seems questionable whether fear can be admitted as any ground for a legal acquittal in such cases, however just a plea it may afford for mitigation of punishment or pardon.

and where there was a presumption of intimidation.

4466. If witnesses were examined in the courts of the magistrates, as they should be, by the magistrates themselves, and closely questioned as to every apparent inconsistency in their depositions, care being taken at the same time to make them understand the questions asked, and to write down the answers given by them so as to convey exactly their intended meaning, the crime would not be so often committed with impunity as it is. To warrant a sentence of punishment, it is only required, under cl. 1, sect. 3, Reg. II. 1807, that the proof adduced be sufficient to satisfy the judge that the crime, defined to be perjury, has really been wilfully committed by the accused prisoner.^(a) Const. No. 638.

Precautions to be adopted in taking evidence to ensure conviction of perjury.

Nature of proof required.

(a) Under the Mahomedan law, perjury may be proved either by confession, or by circumstantial evidence such as affords, in the opinion of the judge, direct or strongly presumptive proof: thus, two contradictory statements of a fact are a direct proof of perjury, where the first is affirmatory and the second a negative; as where a person deposes that he saw A kill B, and afterwards deposes that he did not witness the transaction: but if he first deposes that he did not see the occurrence, and afterwards states in evidence that he was an eye-witness to it, the infirmity of the memory is admitted as an excuse to bar the punishment. It seems also that a person, who confesses that he deposed falsely in the first instance from fear, is not liable to punishment if he afterwards tells

Proof of oath. Magisterial officers are required to insert in the heading of each deposition the name of the person, who administers the solemn affirmation used instead of an oath. C. O. No. 37, February 27, 1857. *L. P.*

Commitment. 4467. If a witness, or any person, is guilty of wilful and corrupt perjury in any cause or matter in a civil court, the judge is immediately to commit the offender to take his trial before the sessions court. *Beng. Reg. IV. 1793, sect. 14. Ced. Prov. Reg. III. 1803, sect. 8.*

Magistrate not to entertain charge of perjury against persons engaged in a civil suit.

4468. Magistrates are not to receive any charges of perjury, which are preferred by parties in civil suits, either against their own witnesses, or against the witnesses of the adverse party, or of subornation of perjury against the adverse parties in such suits; and all individuals whose attendance is required in the civil courts, either as plaintiffs, defendants, or witnesses, are hereby declared not to be liable to any prosecutions of this description, unless they are committed to take their trial by the civil judge under the authority vested in him by the above provision.^(a) *Beng. and Ben. Reg. III. 1801, sect. 2. Ced. Prov. Reg. VII. 1813, sect. 3. Reg. XVII. 1817, sect. 14, cl. 1.*

This rule is applicable to all allegations of perjury against parties or witnesses in any civil suit or any civil proceeding before a judge or a subordinate civil court.

Mode of procedure in such cases.

4469. The above rule (with this qualification that the civil judge may commit to prison, or admit to bail, as he thinks proper, under the discretion given by sect. 5, Reg. II. 1807) is to be considered applicable to all allegations of perjury, or subornation of perjury, against parties or witnesses in any civil suits, or any civil proceedings whatever, before the judge of a civil court, or before a sudder ameen or moonsiff, or an arbitrator or arbitrators appointed to investigate such suits, or an officer employed by a civil court in any local or other enquiry, or in the execution of any civil process. In all such cases the proceedings, on which the charge of perjury, or subornation of perjury, is grounded, if not held before the civil judge in the first instance, are to be referred to him by the

the truth. Where the difference between the two statements is not very material, the witness is not liable to punishment: but it is sufficient if his statement appears to the judge manifestly impossible. See the *futwa* given by the law officers of the *nizamut adawlut*, quoted in Const. No. 656; it contains several other particulars and conditions regarding the liability of witnesses to a sentence of *tazeer* for perjury, and the circumstances which absolve them from punishment; but it seems unnecessary to recount them here.

(a) The reasons of this enactment are thus stated in the preamble to Reg. III. 1801:—"But a practice has become very prevalent in different parts of the Company's provinces, for the parties in civil suits to prefer unfounded charges of perjury against the witnesses of their opponents, and against their own witnesses where their evidence does not establish every point which they may have been brought to prove, and similar charges of subornation of perjury against the adverse parties in such suits. These accusations are frequently supported by gross perjury on the part of the witnesses produced in support of them; and, unless checked, they will deter all men of respectability from appearing to give their testimony on oath in any court of justice, except on compulsion, and will greatly increase the difficulties, which already exist, in obtaining the voluntary attendance of witnesses of this description, while exposed as at present to the disgrace of a commitment to jail, and of a public trial on a criminal charge. The only effectual remedy, which can be applied to this abuse, is to take away altogether from parties in civil suits the right of bringing forward such accusations, and to leave it in the discretion of the judge to determine when any witnesses brought before him are guilty of perjury, which he may always be able to do by cross-questioning them minutely, and by confronting them, when necessary, with the witnesses of the adverse party."

moonsiff or other officer, before whom the proceedings have been held, with the sentiments of such officer upon the case; and, if the judge is of opinion that there are sufficient grounds for bringing the accused party to trial before the sessions court on a charge of perjury, or subornation of perjury, he is to record his opinion to that effect; and at the same time to direct whether the accused is to be admitted to bail or kept in custody. An authenticated copy of the order passed by him, with the whole of the original papers relative to the case, are then to be transferred to the cutcherry of the magistrate, that the order of the judge may be carried into effect, and the case brought to the sessions court, in the same manner as if the charge had been instituted and proceeded upon in the court of the magistrate. Reg. XVII. 1817, sect. 14, cl. 2.

4470. The powers vested by cl. 2, sect. 14, Reg. XVII. 1817 in zillah and city judges of committing persons chargeable with perjury or subornation of perjury in cases pending before such judges, are vested in principal sudder ameens in civil cases pending before them: and the principal sudder ameens and the magistrates are authorized and required to proceed in the manner in which the said judges and magistrates are authorized and required to proceed by the said clause. Act I. 1848, sect. 3.

Principal sudder ameens may commit to the sessions for perjuries in cases before themselves.

4471. The words "any civil proceedings whatever" in the above provision include miscellaneous cases. Const. No. 838.

This includes miscellaneous cases.

4472. A civil judge is not authorized, under the above provision, to commit a person for trial on the charge of giving money to witnesses in a civil suit for the purpose of influencing their evidence. Const. No. 504.

It does not refer to giving money to influence evidence.

4473. The moonsiff is not competent to make over to the magistrate persons charged with perjury; he must refer the proceedings to the judge. Where he sent the case direct to the magistrate without reference to the judge, the proceedings were annulled. Reports *W. P.* 1855, part 1, page 242.

Subordinate courts must refer through the judge.

4474. A prisoner in a criminal case referred by the magistrate to the moulvie for investigation, admitted that he had perjured himself on a previous occasion in the civil court; he was then sent back to the magistrate, who committed him to the sessions for the perjury; held that the proceeding was irregular, and that the commitment should have been made at the instance of the court in which the perjury was committed. The proceedings of the court of circuit were annulled, and the prisoner was held to bail to answer the charge of perjury, if again preferred against him in consequence of any report which the register (the officer in whose court the perjury was alleged to have been committed) might make to the judge in conformity with the above provisions. *N. A. R.* vol. 2, page 208.

The commitment must be made at the instance of the court in which the perjury was committed.

4475. Where the judge, when hearing an appeal from the decree of the principal sudder ameen in a civil suit, reversed the decision, and further ordered that officer to enquire regarding the supposed perjury of certain witnesses in the original proceedings, and to commit them for trial, if he should consider the perjury proved; the court held that the direction was irregular and the commitment vitiated. The witnesses might have been

The judge cannot direct the principal sudder ameen to commit.

committed either by the principal sudder ameen or by the judge while the case was pending before himself; but the judge could not direct the principal sudder ameen to commit; nor could the latter act when the case was no longer pending before him. Reports *W. P.* 1852, page 40.

No appeal lies from the order of a civil court refusing to commit for perjury.

4476. No appeal lies from the order of an inferior civil court, under cl. 2, sect. 14, Reg. XVII. 1817, declining to entertain a charge of perjury, or to proceed against parties accused of such offence. Reports *W. P.* 1855, part 1, page 86. Or from the order of the judge. Carrau's Reports of Summary cases, page 109, September 15, 1846.

Civil courts cannot entertain such charges after the disposal of the suit.

4477. The civil courts cannot entertain charges of perjury in cases which are no longer pending; and no authority is given to them to institute a miscellaneous case for the purpose of enquiring into the alleged perjury. Reports *W. P.* 1855, part 1, page 770. Where the plaintiff in a civil suit before a moonsiff produced a person to personate the defendant and to file a confession of judgment, and the moonsiff put them on their oath and received the pleading without passing any final order, and the parties were subsequently committed for perjury, it was held that the moonsiff acted regularly as the case was still pending, and that the mere receipt and filing of the confession of judgment did not so dispose of the suit as to require the court to revive it by a review of judgment. Reports *W. P.* 1853, part 2, page 1392.

Duty of the magistrate in such cases.

4478. In cases of perjury in the civil courts (whether before the judge or a subordinate court) the commitment should, according to cl. 2, sect. 14, Reg. XVII. 1817, be made by the judge; who is at the same time to determine whether the persons charged are to be admitted to bail or kept in custody; the duty of the magistrate being confined to causing the attendance of the parties and witnesses before the court by whom the case is to be tried. C. O. No. 169 of vol. 2.

The duty of the magistrate is merely ministerial. He cannot exercise his discretion.

4479. When the civil court makes over a case to the magistrate, the latter cannot investigate the charge, nor can he exercise any discretion or express any opinion as to the guilt or innocence of the accused. His duty is simply ministerial. Reports *W. P.* 1853, part 1, page 106; and 1855, part 1, page 242. And the judge cannot direct the magistrate to state his opinion whether perjury is proved, and base his own order of commitment on that opinion. Reports *W. P.* 1853, part 1, page 198.

The magistrate investigating a case of forgery referred by civil court cannot originate charge of perjury;

4480. When a prisoner is made over to the magistrate by a civil court under Act I. 1848 on a charge of forgery, he cannot be committed by the magistrate on a charge of perjury also. In the case of perjury before the civil court the officer presiding alone has the power of originating the charge. Reports *L. P.* 1854, part 2, page 540; and *W. P.* 1853, part 2, page 1423. (a)

(a) The *Western Court* has held that when a subordinate civil court refers to the judge a charge of perjury as regards certain persons, the latter is not authorized to commit to the sessions any other persons whose complicity in the offence he may consider proved. It was also ruled that when the judge committed to the sessions the person against whom the moonsiff alleged perjury, he could not direct the magistrate to enquire into additional

4481. When a case of forgery has been referred to the magistrate by a civil court, he is required to commit the parties against whom he considers it to be proved to take their trial before the sessions court; but it is not within his province to intimate to the civil court that he thinks that there is proof sufficient for committing certain persons to the sessions court for perjury. The commitment in cases of perjury in a civil court must be made either by the judge under cl. 2. sect. 14, Reg. XVII. 1817, or by the principal sudder ameen under sect. 3, Act I. 1848, not at the instance of the magistrate, but in the simple exercise of their own discretion and upon their own undivided responsibility. Reports *W. P.* 1852, page 1349; and 1853, part 1, page 69.

nor recommend the civil court to take up such a charge.

4482. In a case of forgery and perjury, alleged to have been committed before a collector in a summary suit, where the magistrate committed the prisoners, and the circuit judge convicted them, on the complaint of the losing party, the whole of the proceedings were declared null and void, and the prisoners were released. *N. A. R.* vol. 3, page 203.

Examples of irregular procedure.

4483. In a case of perjury, where the commitment was made by the magistrate in the same irregular manner, the proceedings having been made over to him by the civil judge who ought himself to have committed the case, the proceedings were annulled; but as the prisoners had already been in confinement for eighteen months, and under all the circumstances of the case, the court did not consider it necessary that further proceedings should be held against them, and directed that they should be immediately released. *N. A. R.* vol. 3, page 290.

4484. The provisions of sect. 4, Reg. III. 1804 (*Beng.* sect. 4, Reg. XI. 1796)* are capable of enforcement by the civil judge against any party who absconds being at the time under a charge of perjury in the civil court. It is the duty of the civil judge in such cases to call upon the magistrate of the district to perform the acts described in that section, and in the corresponding section of Reg. XX. 1817, with a view to the apprehension of the absconding party; and it is incumbent on the magistrate to obey such requisitions, and to proceed as he would do, were the absconding party in question charged with a criminal offence primarily cognizable in his court. The principle set forth in the third paragraph of Const. No. 648 [viz. that the plea that the collector's office does not furnish sufficient information, or that no division can be made of the attached talooks, is not sufficient to warrant the collector in declining to bring the same to sale, because he is bound to obtain the required information and to make the requisite division or to satisfy the court that it cannot

How the civil judge is to proceed if the person charged with perjury absconds.

* *v. paras.* 1787 *et seq.*

Rule regarding the attachment of property in such cases.

charges against the same individual for forgery, conspiracy, and fraud. Reports *W. P.* 1853, part 1, page 198; and 1855, part 2, page 348. But a doubt may be entertained of the correctness of both of these rulings. The first is not warranted by the words of sect. 2, Reg. III. 1801, or of cl. 2, sect. 14, Reg. XVII. 1817; and the last is directly opposed to Act I. 1848, as regards the forgery, though correct in so far that the magistrate could not entertain the charges of conspiracy and fraud unless preferred by a complainant on oath, for in such cases the requisition of the civil court does not supersede the necessity of a formal complaint.

be done] is applicable to attachments of property directed to be made under the sanction of the law above cited and these instructions (a). C. O. No. 6 of vol. 4.

Rule for the admitting to bail persons charged with perjury, or subornation of perjury.

4485. Persons charged with the crime of perjury, or subornation of perjury, as defined in the preceding section, and appearing to the civil or criminal courts, by whom they are ordered to be brought to trial before the sessions courts, to have been guilty of the charge, are not to be admitted to bail (notwithstanding anything declared to the contrary in any existing regulation) unless specially authorized by the court under whose directions they are committed for trial. But nothing herein contained is to be construed to preclude the magistrate from admitting to bail persons committed by him for trial, on charges preferred originally before him, in cases cognizable by him under the regulations, without any order from a civil or criminal court for the commitment of such persons for trial before the sessions court. Reg. II. 1807, sect. 5.

In cases committed by the civil judge, he is to draw up and sign the charge.

* *v. para. 1020.*

4486. The separate paper, containing the charges in the English and vernacular, prescribed by para. 16 of C. O. No. 54 of vol. 2,* is to be drawn up and signed by the judge, who makes a commitment for perjury brought to light in the course of any civil proceeding. C. O. No. 4 of vol. 4.

Session judge may try persons committed by himself as civil judge.

4487. It is competent to the session judges to try persons committed by themselves as civil judges under the provisions of cl. 2, sect. 14, Reg. XVII. 1817 for perjury or subornation of perjury, any law to the contrary notwithstanding. Act I. 1848, sect. 4.

Perjury before a register of deeds.

4488. The registry of deeds is a "civil proceeding," contemplated by cl. 2, sect. 14, Reg. XVII. 1817, and, in cases of perjury before the register of deeds, the judge and register should proceed in conformity thereto. Const. No. 611.

Procedure in cases of perjury before collector acting judicially.

4489. In so far as concerns the summoning and examination of witnesses, the penalties for false testimony, for resistance of process, contempts, and all other similar matters connected with cases under cognizance before the collectors of land revenue, or other officer by virtue of the powers vested in them by this regulation, or any other regulation whereby collectors are vested with judicial powers, their cutcherry or office for the time being is to be deemed and held to be a court of civil judicature. Reg. VII. 1822, sect. 23, cl. 1.

4490. With reference to this rule, and to the regulations quoted in *paras.* 4468 and 4469, the Western court held that the only authorities competent to commit a putwaree for trial on a charge of perjury, were the deputy collector and commissioner before whom (acting judicially) the cause or matter in which the alleged perjury was committed was pending: and, as they did not think proper to do so, but on the contrary accepted as true the alleged false evidence (and their decisions were still in force), therefore no other authority was competent to institute proceedings against the putwaree on a charge of perjury, in refer-

(a) The original refers to forgery, but the rules then in force with regard to forgery were the same as those now applicable to cases of perjury.

ence to that case, in the magistrate's court or elsewhere. (a) Reports *W. P.* 1856, part 1, page 472.

4491. If the judges of the court of *sudder dewanny adawlut*, or any single judge of that court in cases within the competency of a single judge, are of opinion that there are sufficient grounds, on any civil proceeding before them, for bringing a party or witness to trial on a charge of perjury or subornation of perjury, they are to record their sentiments to that effect; and at the same time to direct whether the party accused shall be admitted to bail, or kept in custody:—an authenticated copy of the order so passed, with the whole of the original papers relative to the case, are then to be transmitted to the proper magistrate, for the purpose of being proceeded upon as stated in the preceding clause [*para.* 4469]. Reg. XVII. 1817, sect. 14, cl. 3.

Sudder dewanny adawlut how to proceed, if there appear sufficient grounds to bring any person to trial on such charge.

4492. Whenever a witness giving evidence before a sessions court is considered by the judge of that court to be guilty of wilful perjury, or whenever a person attending a sessions court is considered by the judge of that court to be guilty of subornation of perjury, in any trial or matter depending before the court, and the whole of the witnesses required for the proof of the charge and for the defence of the accused are also in attendance, it is competent to the session judge to direct the magistrate to commit the person so charged for immediate trial before the sessions court. Provided that nothing in this section is to be construed to authorize the conviction or punishment of any person, charged with the crimes specified, until he has been regularly put upon his trial; or until any material evidence which he has to offer in his defence has been received and duly considered. Reg. II. 1807, sect. 6.

Session judge how to proceed if any witness or party attending the court is guilty of such offence.

4493. The session judge cannot leave the commitment of parties for perjury to the discretion of the magistrate. Reports *W. P.* 1853, part 2, page 1158. But session judges should exercise great caution in directing the committal for perjury of parties who have contradicted before the sessions court the evidence given by them before the magistrate, especially when the contradiction benefits the party accused. By an indiscriminate or injudicious use of the power vested in the session judge, witnesses would be forced to adhere to any perjury, which they may have committed before the magistrate: whereas, by abstaining from the punishment of those witnesses who may appear to correct at the sessions the falsehood of their first evidence, and limiting the order of committal to those who manifestly make a false deposition before the sessions, the ends of justice would be more satisfactorily attained. C. O. No. 34 of vol. 4. *W. P.*

Judge must exercise great caution.

4494. The restrictions against prosecutions for perjury and subornation of perjury of witnesses and parties in the civil courts, unless the officers presiding in those courts are of opinion that there are grounds for such prosecutions, are extended to all charges of perjury, or subornation of perjury, against witnesses and prosecutors in the criminal courts, or

Magistrate is not to receive or act upon any charge of such offence alleged to have been committed in any criminal court, unless the officer presiding in such court

(a) It would seem from this that a collector acting judicially must refer the case to the civil judge. For proceedings in any other capacity, see *para.* 4497.

considers that there are grounds for the prosecution.

before any public officer authorized to hold inquiries respecting offences of a criminal nature. Provision is already made in sect. 6, Reg. II. 1807 or such cases, when persons attending the sessions court appear to the judge of that court to be guilty of perjury or subornation of perjury. The session judges, and the judges of the nizamat adawlut, or a single judge of that court in cases within the competency of a single judge, are empowered to direct the proper magistrate to commit to custody, or hold to bail, and to bring to trial at the sessions, any person who, from proceedings before the above courts, appears to have been guilty of the crime of perjury, or subornation of perjury; and the magistrates themselves are vested by the regulations with full authority to commit, or hold to bail, for trial before the sessions court all persons who, on their own proceedings, or those of their assistants, are considered guilty of either of the crimes above mentioned. The magistrates are therefore prohibited from receiving and acting upon any charges of perjury or subornation of perjury, alleged to have been committed in the course of any trial, or enquiry of a criminal nature, excepting such as come before them in the manner provided for by this section. Reg. XVII. 1817, sect. 14, cl. 4.

Session judge may try a case which he has directed the magistrate to commit.

4495. In perjuries before a session judge, he is at liberty, under the above provisions to direct the magistrate to commit the offenders for trial, and immediately to proceed to the trial of the case himself. C. O. No. 169 of vol. 2.

Perjury before a law officer in a case referred for report

4496. When the prisoner was committed by the magistrate for perjury before the law officer in a case referred to the latter for investigation and report, it was held that the commitment was good, because it was made by the officer before whom the case came for consideration in the first instance. Reports *L. P.* 1854, part 2, page 28.

Procedure in cases where a collector or other public officer, not sitting judicially,

4497. The magistrates are further restricted from receiving and acting upon charges of perjury, or subornation of perjury, alleged to have been committed before a collector or other public officer, unless such officer transmits the proceedings held before him with his opinion, that there are grounds for believing such charge to be well founded. In that case, and if the magistrate on inspection of the proceedings, or after making such further enquiry as he deems necessary, is of opinion that there are grounds for bringing the party accused to trial before the sessions court, he is to pass an order to that effect; and is at the same time to direct whether the accused shall be held to bail or kept in custody till the sessions. Reg. XVII. 1817, sect. 14, cl. 5. This provision refers to a collector in his financial capacity. If acting judicially, the mode of procedure is different, for which see para. 4490. Reports *W. P.* 1856, part 1, page 472.

Trial.

If there is no private prosecutor, the magistrate is to appoint a person to prosecute.

4498. In all the cases provided for by this section, if there is no private prosecutor to whom the magistrate judges it proper to leave the prosecution of the case before the sessions court, he is to appoint the vakeel of government, or some other qualified person, to conduct the prosecution before the sessions court, and is to furnish him with the requisite information and instructions for that purpose. Reg. XVII. 1817, sect. 14, cl. 6.

4499. The following forms of indictments are to be used in cases of perjury, *mutatis mutandis*:—"Perjury, in having, on the 1st May 1847, deposed under a solemn declaration, taken instead of an oath, before the magistrate of zillah Moorshedabad, that [*here enter the false statement in which the perjury consists*], such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case."—In cases of statements directly at variance with each other, the following form is to be used:—"Perjury, in having on the 1st January 1847, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the civil judge of zillah Moorshedabad, that [*here enter the first statement*]; and in having on the 13th February 1847 again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the said civil judge of zillah Moorshedabad [*or any other court*], that [*here insert the second statement*]; such statements being contradictory of each other on a point material to the issue of the case." C. O. No. 10 of vol. 4.

Forms of indictment.

4500. An error as to the date of the perjury in the charge was held necessarily fatal to the commitment. But the case would have been sent back for retrial, if there had appeared to the court sufficient evidence to support the charge. Reports *W. P.* 1852, page 194.

Error as to date.

4501. The exact words used by the deponent must be quoted in the charge; and the perjury must be proved on them, and not on any arbitrary construction as to the meaning of the language used. Reports *W. P.* 1853, part 1, page 198.

Exact words must be quoted.

4502. Where the magistrate in drawing up the charge inserted the whole of the deposition made by the prisoner, instead of pointing out the particular portion on which the perjury was assigned, the prisoner was acquitted. Reports *L. P.* 1854, part 1, page 380.

The part of the deposition on which the perjury is assigned, must be pointed out.

4503. It is not regular to convict of perjury on mere confession of having been instigated to swear falsely, when the truth or falsehood of the facts sworn to be doubtful: but the confession of the prisoner that he swore falsely is sufficient evidence for conviction of perjury, provided circumstances indicate the falsehood of the deposition charged to be false. *N. A. R.* vol. 1, page 314; and vol. 2, page 168.

Confession alone is not sufficient; proof required of the falsity of the matters sworn.

4504. The original depositions on which the charge of perjury is laid, must be filed in the case. Reports *L. P.* 1851, page 381.

Original deposition must be filed.

4505. The recital in the roobakaree of commitment that the false deposition was taken on oath, is not a sufficient proof of the fact: but where it was certified by the magistrate that the false statement was made on oath, and the prisoner did not dispute that he was sworn, the nizamat adawlut did not deem the omission to bring witnesses to that fact to be material. Where, in a case of alleged false personation by a witness before an uncovenanted deputy collector under Reg. VII. 1799, the time, place, and court, in which the evidence was given, were not stated in the charge; and the deposition taken before the deputy collector was not placed on the record of the trial; and the authority under which the deputy collector took the deposition was not recorded: the trial was quashed, and the proceedings were returned that these omissions might be supplied, and the trial

Proof required of the taking of the oath; of the authority to administer the oath; and of the occasion. The time, place, and court, must be noted in the charge.

held *de novo* in a regular manner. N. A. R. vol. 2, page 64; vol. 3, page 22; and vol. 5, page 166.

Case of fatal variance in description of the witness.

4506. Where the prisoner denied on oath that he had previously given evidence, and was accordingly committed for perjury; and it appeared that in the original deposition the witness was described as about thirty years of age, and that the prisoner appeared on trial to be upwards of fifty; the nizamat adawlut held that this discrepancy was sufficient ground for doubting his identity, and accordingly acquitted him. N. A. R. vol. 3, page 347.

Irregularities in recording depositions fatal to commitment.

4507. The prisoner, committed for perjury on two contradictory statements, was acquitted, because one deposition of the accused had not been signed by himself, and the other was not signed and duly certified by the magistrate before whom it was taken. There was nothing therefore to show that the latter had been recorded before an officer empowered to administer an oath. Reports *L. P.* 1854, part 1, pages 217 and 328. So, where the deposition was not attested on the date when it was written down, the witness having absented himself in the interval. Reports *L. P.* 1855, part 2, page 349. So, where the perjury was assigned on a deposition made before the police, and the fact of its being made on oath was not recorded thereon, although it was proved that the oath had been administered. Reports *W. P.* 1854, part 1, page 321. So, where the writers of the depositions had deceased, and the deputy magistrate before whom one was taken had left the country, and there was no evidence as to the mode in which the depositions were given by the prisoner, that is to say whether they were deliberately and intentionally made. Reports *L. P.* 1856, part 2, page 940.

Oath against oath is not sufficient evidence of perjury.

4508. When the perjury charged consisted in the prisoner having on oath stated that two persons were present at and attested the execution of a certain deed of gift, and those two persons denied that they were present and attested the deed, he was acquitted on the ground that such conflict of testimony was not sufficient proof of the prisoner's falsehood without evidence to establish the truth of the counter-statement. Reports *L. P.* 1855, part 2, page 354.

Whether proceedings can be taken for perjury, after the final disposal of the case in which the perjury occurred.

4509. It has been held that the case in which the perjury charged was committed must be pending at the time of the commitment of the prisoner. Perjury, it was said, must be material to the issue of a case pending, otherwise no issue is left for disposal: when once final orders have been passed in a case between the parties to it, the proceedings cannot be referred to for the purpose of enquiring into a charge of perjury said to have been committed while it was pending. Reports *L. P.* 1854, part 2, page 680; 1855, part 1, page 766; and *W. P.* 1854, part 2, page 169. But it seems that this ruling is incorrect; and is opposed to principle and precedent. The case in which the evidence is given must be pending when the evidence is taken, because otherwise the court could not administer the oath; but the disposal of the case cannot affect the guilt of the criminal or the power of the criminal court to deal with the perjury; and no express law interdicts the practice.

Whether false evidence given during a preliminary investigation is perjury.

4510. It has also been held that when only the preliminary investigation under cl. 6, sect. 2, Reg. III. 1812 is being made, and when therefore the accused has not been put on

trial, witnesses who depose falsely cannot be punished for perjury, as the case has not assumed the character of a judicial proceeding against the accused. Reports *L. P.* 1854, part 1, pages 170 and 185; part 2, page 568. In such cases, it is said, the complainant and the witnesses may be punished for false complaint or conspiracy; and this is doubtless correct; but that would not bar the punishment for perjury. The doctrine appears to be erroneous, and was disallowed by the majority of judges in the case of *Musst. Boodhia* in Reports *L. P.* 1855, part 2, page 404.

4511. A false deposition on oath, or under a solemn declaration taken instead of an oath, containing a deliberate and specific criminal charge, which the deponent knows to be unfounded, and which also appears to be malicious, is within the provisions for perjury, notwithstanding the rules for the punishment of malicious, vexatious, and unfounded complaints in sect. 5, Reg. VII. 1811. Const. No. 233.

Charge of perjury in false complaint on oath may be entertained notwithstanding the provisions for false complaints.

4512. If any person amenable to the jurisdiction of a sessions court is convicted before that court, whether by his free and voluntary confession, or by the testimony of credible witnesses, or by strong circumstantial evidence, of wilful perjury, or subornation of perjury, as defined in Reg. II. 1807, or Reg. XVII. 1817; and is, in consequence, by the futwa of the Mahomedan law officer of the sessions court, declared liable to discretionary punishment (*tazeer*, *acoobut*, or *seasut*); the session judge, provided he concurs with the law officer in the conviction of the prisoner, is to sentence him to receive thirty stripes [now commutable to two years' additional imprisonment], and to be imprisoned in banishment from the district for the period of seven years, unless the judge, on consideration of all the circumstances of the case, is of opinion that any part of the prescribed punishment is too severe; in which case he is authorized to mitigate the sentence to imprisonment for any period not less than three years. Reg. II. 1807, sect. 3, cl. 1. Reg. XVII. 1817, sect. 9, cls. 1 and 2.

Penalties.

What sentence may be awarded in cases of perjury, and subornation of perjury.

4513. If in any instance the session judge is of opinion, that a further mitigation or remission of punishment is necessary, he is, provided he concurs in the conviction of the prisoner, to pass sentence according to the preceding clause, and to refer the trial, with his sentiments at large, for the final sentence or order of the *nizamut adawlut*. Reg. XVII. 1817, sect. 9, cl. 3.

Session judge may refer the trial for mitigation of such sentence.

4514. If the session judge differs in opinion from the law officer of his court, with respect to the conviction of the prisoner, he is not to pass any sentence, but is to transmit his own and the magistrate's proceedings, with his sentiments in a letter to accompany them, for the sentence of the *nizamut adawlut*. Reg. II. 1807, sect. 3, cl. 2.

Trial to be referred if session judge differs from his law officer.

4515. In cases of reference to the *nizamut adawlut*, this court, after taking the futwa of its law officers,* is, if the prisoner be convicted, to sentence him to any punishment deemed proper, not exceeding that specified above. Reg. II. 1807, sect. 3, cl. 3.

Sentence to be passed by the *nizamut adawlut*.

*But see para. 1480.

4516. A prisoner convicted of perjury in falsely swearing to a charge of murder against several persons, having also previously given a different account of the transaction

Precedents.

Cases of false accusations made on oath.

on oath, was sentenced to tusheer and to imprisonment in banishment for 7 years. N. A. R. vol. 3, page 50. A woman caught in the act of adultery by two persons, accused them falsely of theft, and was sentenced to one year's imprisonment from the date on which her trial was completed by the sessions court. N. A. R. vol. 3, page 22. Where the prisoner was brought to the magistrate's court with a hand and a foot cut off, and falsely accused certain parties of having perpetrated the mutilation and of having murdered his brother, but it appeared that he was actuated by a desire to secure attention and care in his wounded state and a provision for himself in his helpless condition, and he confessed the crime, he was sentenced to 6 months' imprisonment, in addition to the 6 months' confinement which he had already undergone. N. A. R. vol. 2, page 168. Where the prisoners deposed to a false charge of robbery, but on the trial of the person whom they had accused voluntarily retracted their assertions, and there was strong suspicion that undue influence had been exerted to make them depose falsely, the nizamat adawlut, in consideration of the confinement which they had already suffered, ordered their release.(a) N. A. R. vol. 1, page 288.

Cases of perjury
in order to defeat
the ends of justice.

4517. Where the prisoner denied in the sessions court all knowledge of a confession which he had attested before the magistrate, he was sentenced to imprisonment for 5 years with labor in irons. N. A. R. vol. 5, page 102. So, where the prisoner having witnessed a confession of burglars at the thana, denied on oath before the magistrate that he had done so; but afterwards before the same magistrate admitted that his denial was false, alleging in extenuation and excuse that he had made a misstatement through confusion and perplexity of mind and not deliberately; the court convicted him of perjury on his confession of false swearing, although the law officers of both courts considered that the excuse advanced in the confession was sufficient to bar punishment. N. A. R. vol. 3, page 238. Where the prisoners swore before the magistrate that they had witnessed fighting in an affray though without being able to distinguish the dealers and receivers of blows, and afterwards denied before the sessions court that they had seen fighting at all, they were acquitted by the futwa on the ground of perplexity of mind, but convicted by the court and sentenced to two years' imprisonment. N. A. R. vol. 3, page 255. A chokeedar deposed before the magistrate in a case of dacoity under investigation that no dacoity had taken place; and seven days after on being re-examined admitted his first deposition to have been false, declaring that on visiting the premises after the robbery he had observed the signs of a dacoity having been perpetrated; the session judge held that this did not amount to "giving wilfully two statements directly at variance with each other," but the sudder court convicted the prisoner, and he was sentenced for the perjury to imprisonment for one year with labor. N. A. R. vol. 6, page 47. In the investigation of an affray attended with murder in the Alipore jail, a duffadar of the jail-guard deposed

(a) Under the Mahomedan law, if the false charge is retracted before the person accused has suffered any injury from the accusation, the false accuser is not subjected to the penalty for perjury, but is liable to discretionary punishment.

before the magistrate that on hearing the noise he had quitted the place where he was on guard, and had run to the spot where the prisoners were fighting; before the commissioner he deposed that he did not quit the spot where he was on guard and that he knew nothing of the disturbance except from hearsay; he was convicted of perjury, but discharged with reference to the imprisonment he had already undergone. N. A. R. vol. 4, page 101. In a case of assault one of the witnesses first deposed to the truth of the complaint, and was afterwards compelled by intimidation to give his evidence on behalf of the defendant in direct opposition to that which he had previously given; he was sentenced for the perjury to imprisonment for 3 months; and the defendant who had brought him forward in the second instance was convicted of subornation of perjury, and sentenced to imprisonment for 3 years with labor in irons. N. A. R. vol. 5, page 109. Where a witness in order to induce the magistrate to place more confidence on his evidence swore that a certain woman was his cousin, whereas in truth she was his sister, he was sentenced for the perjury to imprisonment for one year. N. A. R. vol. 5, page 175. So, where a witness, in order to gain greater credit, swore falsely as to the evidence which he had given in a former suit, he was sentenced to 6 months' imprisonment. N. A. R. vol. 5, page 110. So, where a witness for the defence in a case of theft falsely denied on oath that the prisoner was his brother, declaring that he was his cousin, with a view to obtain credit to his statement of the honest acquisition of certain property by the prisoner, the nizamat adawlut considered a sentence of one year's imprisonment sufficient. N. A. R. vol. 4, page 259. And so, where a father, aged 70, denied that the prisoner, who had called him to prove an alibi, was his son, with the same intent, he was sentenced to imprisonment without labor, and irons for 3 months. N. A. R. vol. 2, page 313. On the trial of a darogah for the corrupt receipt of a horse, a burkundaz of the thana swore that the prisoner had not received the horse as alleged by the prosecutor, but had purchased it from a peasant; this statement he afterwards acknowledged to be false, declaring that he was instigated to swear falsely by the darogah, who had threatened him with vengeance if he disclosed the truth; he was sentenced, under the impression that he had been actuated in the first instance by dread of his official superior, to be imprisoned with labor for one year and a half. N. A. R. vol. 3, page 70. Where a person, called upon to prove on oath his sufficiency as security for another, deposed that his property was free from incumbrance, and eight days after came forward and acknowledged that his property was at the time of his former deposition mortgaged to its full extent, he was sentenced to imprisonment for one year. N. A. R. vol. 1, page 159.

4518. Where the prisoner charged several persons with carrying him away and confining him, and it appeared that his brother was the party injured, and that he had come forward merely on account of the indisposition of his brother, he was sentenced to imprisonment for 3 years. N. A. R. vol. 4, page 99. A prisoner convicted of having wilfully perjured himself by giving his deposition under a feigned name, was sentenced to imprisonment for 3 years; and his brother-in-law, who deposed to his identity with the individual whom he personated, was sentenced to imprisonment for 2 years, both with labor in irons. N. A. R. vol. 5, page 58. Where the prisoner gave evidence under different names in two civil

Cases of perjury
by false personation.

suits, between the same parties, denying on the last occasion his identity with the witness who had given evidence in the first case, he was sentenced for perjury to imprisonment for one year. N. A. R. vol. 5, page 144. So, where the brother of a person summoned as a witness came forward, and gave evidence on oath in the name of his brother, he was sentenced to one year's imprisonment. N. A. R. vol. 4, page 260. And so, where the prisoner personated another, and swore falsely that he was present at an affray, and it appeared that his sole object was to oblige the individual whom he personated, he was sentenced to 3 months' imprisonment. N. A. R. vol. 2, page 204. Where a person came forward to attest the signature to a power of attorney in the room of one who had witnessed it and under his name, but the false personation was discovered before he had given his deposition,^(a) he was sentenced, to imprisonment for 6 months; and the person who had brought him forward was sentenced, for subornation of the perjury, to imprisonment for one year. N. A. R. vol. 4, page 97. So, where in attesting a deed of acquittance before a register of deeds the witnesses present forgot the names of the contracting parties, and the attorney declaring that he had another witness in attendance took one of those witnesses out of court and altered his dress, and re-produced him in that disguise under the name of another of the subscribing witnesses, and the witness after having given his deposition under such false name was recognised by the register as the person who had previously appeared; the witness was sentenced for the perjury to imprisonment for 6 months, and the attorney for subornation of the perjury to imprisonment for one year, both without labor: it is to be observed that in this case there was no record of the perjury, as the depositions of witnesses attesting deeds before a register are not committed to writing. N. A. R. vol. 5, page 78. Where the prisoner was convicted of having produced a person to give evidence in a court of justice under a fictitious name, he was convicted of subornation of perjury, though the perjury was not completed, the fraud having been discovered before the witness was put upon his oath, and was sentenced to imprisonment with labor for 2 years. N. A. R. vol. 2, page 363. In a similar case, the person in whose favor the perjury was committed, was acquitted on the ground that he was a minor, being only fourteen or fifteen years of age, and that, although present in court during the commission of the perjury, yet he was not personally concerned in the subornation, as the suit was conducted by his gomastah and general agent. N. A. R. vol. 3, page 280.

Cases in civil
courts with intent
to defraud.

4519. Where two witnesses swore under fictitious names to the execution of a forged ikrarnamah, they were convicted of perjury; and the mokhtar who had introduced them, being well acquainted with the person and real name of one of the witnesses, was convicted of subornation of perjury; and all three were sentenced to stripes, tusheer, and imprisonment for 7 years; the vakeel employed in the case was acquitted of the charge of subornation, but was dismissed from his office of pleader in consequence of the strong

(a) The report does not show very clearly, but it is to be presumed, that the perjury was completed by the giving on oath a false name; for it is expressly mentioned that the questions *were about to be put* to the witness, when the false personation was pointed out by a bystander.

suspicion which rested against him of having been concerned therein. N. A. R. vol. 1, page 293. Where the prisoner in a civil suit denied on oath that he had disposed of some ancestral property to a certain person, and five years afterwards in another suit contradicted that testimony by admitting on oath and proving by deeds that he had sold it to that person, and the denial was shown to have been material to the issue of the suit, he was sentenced to imprisonment for 3 years. N. A. R. vol. 2, page 202. A prisoner swore to having witnessed the payment of a sum of money on a certain day, on which date, and during many months before and after it, he was a prisoner in jail under a sentence for theft, which rendered it physically impossible that he could have witnessed the transaction; he was convicted of perjury; and his production as a witness by the person who was to benefit by the perjury was held to afford sufficient presumptive evidence against the latter to convict him of subornation of perjury; both were sentenced to imprisonment with labor for 3 years. N. A. R. vol. 2, page 361. In a similar case, where the prisoner, aged 70, swore to the authenticity of a forged receipt, he was convicted of perjury and sentenced to 2 years' imprisonment with labor. N. A. R. vol. 4, page 58. The wilful concealment of bond-debts and other property by an insolvent debtor, when examined on oath under the rules of sect. 11, Reg. II. 1806, has been punished as perjury by imprisonment for 3 years. N. A. R. vol. 5, pages 62 and 167.

NOTE.

Perjury at common law in England is defined to be a wilful false oath by one who, being lawfully required to depose the truth in any proceeding in a court of justice, swears absolutely in a matter of some consequence to the point in question, whether he be believed or not. The proceedings however are not confined to courts of justice.—No oath taken before persons acting merely in a private capacity; or before those who take upon them to administer oaths of a public nature without legal authority; or before those who are authorized to administer some oaths, but not that which happens to be taken before them; or even before those who take upon them to administer justice by virtue of an authority seemingly colourable, but in truth void; can ever amount to perjury in the eye of the law, for they are of no manner of force.—But any false oath is punishable as perjury which tends to mislead a court in any of its proceedings relating to a matter judicially before it, though it in no way affects the principal judgment which is to be given in the cause; as an oath made by a person offering himself as bail. And not only such oaths as are taken on judicial proceedings, but also such as any way tend to abuse the administration of justice are properly perjuries, as an oath before a justice to compel another to find sureties of the peace. A man may be indicted for perjury in an oath taken by him in his own cause, as well as in an oath taken by him as a witness in the cause of another person.—The object with which the oath was taken need not be carried into effect, for the perjury is complete at the moment when the oath is taken, whatever be the subsequent proceedings; as in the case of an affidavit which could not be received in the court.—It was formerly thought that an oath did not amount to perjury unless sworn in absolute and direct terms, and that if a man swore according as he *thought, remembered, or believed* only, he could not be convicted of perjury: but the modern doctrine is otherwise: it is said by Lord Mansfield to be certainly true, that a man may be indicted for perjury in swearing that he *believes* a fact to be true, which he knows to be false. So perjury may be committed by swearing to a statement which in one sense is true, but which, in the sense intended to be impressed by the party swearing, is false; as where a witness swore that he left the party, whose health was in question, in such a way that, were he to go on as he then was, he would not live two hours; and it afterwards turned out that the man was very well, but had got a bottle of gin to his mouth; and true it was, in a sense of equivocation, that had he continued to pour the liquor down, he would in much less time than two hours have been a dead man. As regards perjury for a mere matter of opinion, Mr. Alison, in his principles of the criminal law of Scotland, says; “If the matter sworn to be one of opinion only, as a medical opinion, it cannot in the general case be made the foundation of a prosecution for perjury: but though a medical or scientific opinion cannot in general be challenged as perjury, because the uncertainty and division of opinion in the medical profession is proverbial, yet if it assert a fact, or draw an inference evidently false (as, for example, if a medical attendant swear that a person is unfit to travel

who is in perfect health, or an architect declare a tenement to be ruined which is in good condition) certainly the gross falsehood of such an assertion shall in neither case be protected by the plea that it related to a matter of professional investigation."—Whether a witness can be convicted of perjury, in answer to a question which he could not legally be called upon to answer, but which is material to the point in issue, is doubtful.—The defendant, although perjury be assigned in his answer, deposition, or affidavit in writing, may prove that an explanation was afterwards given, qualifying or limiting the first answer.—The materiality of the matter sworn to must depend upon the state of the cause, and the nature of the question in issue. If the oath is altogether foreign from the purpose, not tending to aggravate or extenuate the damages, nor likely to induce the jury to give a readier credit to the substantial part of the evidence, it cannot amount to perjury. As if upon a trial, in which the issue is whether such a one is *compos* or not, a witness introduces his evidence by giving an account of a journey which he took to see the party, and swears falsely in relation to some of the circumstances of the journey. Also it is said to have been resolved, that a witness who swore that one drew his dagger and beat and wounded J. S., when in truth he beat him with a staff, was not guilty of perjury, because the beating only was material. In such cases, it is said, it ought to be intended that the question was put in such a manner, that the witness might reasonably apprehend that the sole design of putting it was to be informed of the substantial part of it, which might induce him, through inadvertency, to take no notice of the circumstantial part, and give a general answer to the substantial; for otherwise, if it appear plainly that the scope of the question was to sift him as to his knowledge of the substance by examining him strictly as to the circumstances, and he gave a particular and distinct account of all the circumstances, which afterwards appeared to be false, he cannot but be guilty of perjury, inasmuch as nothing can be more apt to incline a jury to give credit to the substantial part of a man's evidence, than his appearing to have an exact and particular knowledge of all the circumstances relating to it. Upon these grounds the opinion of the judges seems to be very reasonable, who held a witness to be guilty of perjury who in an action for trespass by sheep deposed that he knew the sheep to be the defendant's, because they were marked with a mark which he knew to be the defendant's, whereas in truth the defendant never used such a mark; for the giving such a special reason for his remembrance could not but make his testimony the more credible than it would have been without it; and though it signified nothing to the merits of the cause, whether the sheep had any mark or not, yet inasmuch as the assigning such a circumstance in a thing immaterial had such a direct tendency to corroborate the evidence concerning what was most material, it was consequently equally prejudicial to the party, and equally criminal in its own nature, and equally tending to abuse the administration of justice as if the matter sworn had been the very point in issue.—Evidence is essential, not only to show that the witness swore falsely in fact, but also, as far as circumstances tend to such proof, to show that he did so corruptly, wilfully, and against his better knowledge. There must be proof that the false oath was taken with some degree of deliberation; for if, under all the circumstances of the case, it appears that it was owing to the weakness rather than the perverseness of the party, as where it is occasioned by surprise or inadvertence, or by a mistake with regard to the true state of the question, this would not amount to voluntary and corrupt perjury.—It is a general rule, that the testimony of a single witness is insufficient to convict on a charge of perjury, because there is in that case only one oath against another: but it seems that this means only, that the contradiction must be proved by not less than two direct witnesses; the taking of the oath and the facts deposed may be proved by one witness only. Also, if the perjury consists in the defendant's having sworn contrary to what he had before sworn upon the same subject, this is not within the rule above-mentioned; for the effect of the defendant's oath in the one case is neutralized by his oath in the other; and proof by one witness will, therefore, make the evidence against the defendant preponderate. But the contradiction of the one oath of the defendant by the other is not enough, for there is nothing to show which of the statements made by the defendant is the false one, where no evidence of the falsity is given. Upon this subject the following observations were made by Holroyd J.; "Although you may believe that on the one or other occasion the prisoner swore what was not true, it is not a necessary consequence that he committed perjury; for there are cases in which a person might very honestly and conscientiously swear to a particular fact from the best of his recollection and belief, and from other circumstances at a subsequent time be convinced that he was wrong, and swear to the reverse, without meaning to swear falsely either time." So, where the defendant was charged with perjury committed on a trial at the sessions, it was held that a deposition made by him before the magistrate entirely different from what he swore at the trial, was not in itself sufficient proof that the evidence he gave at the sessions was false, but that other confirmatory proof must be adduced to satisfy the jury that he swore falsely at the trial.—The party prejudiced is a competent witness to prove the offence.—*Roscoe's Digest*.

CHAPTER III.

OF FORGERY. (a) *

4520. A charge of forgery cannot be sustained, when the document alleged to have been forged is not forthcoming. N. A. R. vol. 5, page 112.

Forged document must be produced.

4521. Documents which are proved or suspected to be forgeries are not to be returned to the parties producing them. Const. No. 139.

Such documents not to be returned.

4522. The penalties prescribed for forgery are meant to include all fraudulent and injurious fabrications or alterations of written deeds, or of written or printed papers, of whatever description; as well as all counterfeit seals or signatures thereto. It is further hereby declared, that persons convicted of procuring, or causing, any such forgery, are liable to the same punishment, as those convicted of having actually committed the forgery at the instigation of others. Reg. II. 1807, sect. 4, cl. 3.

Definition and conditions.

Principals and accomplices liable to same punishment.

4523. In order to make the offence complete, there must be a fraudulent intent, that is to say a deceit practised with intent to damage another. N. A. R. vol. 6, page 215. Reports *L. P.* 1855, part 2, page 977. Thus, where the prisoner having tendered a security bond on plain paper, was directed to furnish it on stamp paper, and then copied the bond, including the names of the attesting witnesses, on paper of the proper value, which he then gave to the surety who signed it with his own hand, he was acquitted of forgery in copying the names of the witnesses, as he had no fraudulent intention in so doing. N. A. R. vol. 5, page 95. So, where the two prisoners, the peshkar and mir-munshi of a collector's office, were charged with forgery in having written certain deeds of sale, and therein fraudulently inserted the word "zumeendaree" (whereas the rights of the zumeendar were never sold), they were acquitted, as the mere fact of their having copied one of the deeds of sale was not deemed sufficient ground for inferring a fraudulent intent or knowledge of the forgery, and there was no proof whatever that either of them drafted or compared the deeds, or held any communication with the purchaser, or in any way profited by the forgeries. N. A. R. vol. 4, page 53. So, as to antedate and postdate papers is very common among the natives without any fraudulent purpose, the court refused to admit such fact alone to be evidence of forgery. N. A. R. vol. 2, page 36. And the affixing the name of another in his absence, but with the permission of his constituted agent, to a security bond, was held not to amount to forgery, as the prisoners were actuated by no fraudulent intention. N. A. R. vol. 1, page 253. Reports *L. P.* 1851, page 729.

There must be a fraudulent intention;

so, to antedate or postdate a deed is not in itself forgery; so, the mere signing another person's name is not necessarily forgery.

4524. It seems that the execution of two deeds of sale or lease of the same estate to different persons, does not amount to forgery; it is merely a fraud: but it does not clearly

The execution of two deeds of sale or lease of the same lands is a fraud, and does not amount to forgery.

(a) The forgery here meant does not refer to the forging of counterfeit coin, public stamps, public securities, or bank-notes, which have been placed under the head of coining, in chapter 1 of book 4; see page 637: and the rules regarding the using, issuing, selling, or disposing of, such counterfeit coin, stamps, bank-notes, promissory notes, or other securities for money, knowing the same to be counterfeit; and for having in possession such counterfeit coin or stamps without lawful excuse; will be found in the same place.

appear from either of the reported cases whether it would become forgery, if the subsequent conveyance were antedated for the purpose of avoiding the former one; as is held in English law.—A prisoner tried on a charge of forgery cannot be convicted of fraud; but it is sufficient if the two offences are charged in separate counts. *N. A. R.* vol. 2, page 50; and vol. 6, page 2.

It is not necessary that there should be any writing; it is sufficient if the seal be forged, though the paper be blank.

4525. To the offence of fabrication in the above definition it is not necessary that there should be any writing; it is sufficient that the seal be forged, though the paper be blank. Thus, where a number of blank papers with forged seals at the top were found in the possession of one of the prisoners, he was convicted on violent presumption of fabricating papers with false seals; and was sentenced, as well as another prisoner convicted of selling the same knowing them to be false, to imprisonment for 7 years. *N. A. R.* vol. 2, page 3. In a similar case, the prisoner convicted on violent presumption of the forgery was sentenced to tushcer and imprisonment with labour for 7 years, and the other prisoners convicted of privity to and concealment of the same were sentenced to 2 years' imprisonment with hard labour. *N. A. R.* vol. 2, page 405. Reports *L. P.* 1851, page 789.

The writing a petition signed with the names of other parties may be forgery.

4526. The writing a petition, accusing certain authorities of bribery, under the name of another person, was held to be forgery; and the tendency of such false representation was directly injurious, both to the persons aspersed therein and to the professed writer. Reports *W. P.* 1854, part 1, page 365.

The instrument must have the appearance of being genuine.

4527. It is also essential that the instrument be such as is calculated to obtain false credit, *i. e.* that credit which would be due to it if it were genuine. In essential parts it must bear upon the face of it the similitude of the true instrument; but it is not necessary that it should bear an exact resemblance to the original, provided it so far resemble it as to be likely to be mistaken for it by any common observer. Thus it was held that a conviction of forging a subpoena could not be had, when the fabricated document bore neither seal nor signature. Reports *L. P.* 1853, part 1, page 43.

It is no excuse that the prosecutor entrapped the prisoner into self-crimination.

4528. Where the prosecutor suspected the prisoner of having forged receipts in his name, and employed a person to obtain from the prisoner such forged receipts, and the commitment was made on the charge of forging these documents, the court held that the mode adopted of entrapping the prisoner into self-crimination and the commission of an overt act of fabrication, did not involve any illegality. Held also that the forgery was complete without publication. Reports *W. P.* 1855, part 1, page 530.

Magistrate cannot search a house for forged papers on the requisition of the civil court.

But proof so obtained may be accepted to establish forgery of papers voluntarily filed.

4529. When a magistrate searched a house for forged papers on the requisition of a civil court, before which the suit was pending, it was held that such a proceeding was not warranted by law; and also that a charge of forgery founded on papers so obtained could not be sustained. But the proceedings were not vitiated in regard to papers voluntarily filed, and the proof of the forgery, as established by the production of other papers found in the house when so illegally searched, was admitted. Reports *W. P.* 1855, part 1, pages 712 and 948.

4530. The having a forged bank-note in possession is not declared to be a punishable offence by Reg. XVII. 1817, or any other regulation in force. Const. No. 361.

Mere possession of a forged bank-note is not punishable ;

4531. The mere possession of seals bearing the names of other individuals does not constitute a punishable offence ; as a seal-cutter or any other man may have such seals without committing the crime of forgery, and indeed without any imputation of a criminal offence. N. A. R. vol. 3, page 153.

or the mere possession of seals bearing the names of other persons.

4532. If it appears to any court of judicature during the course of a trial, that a grant for land to be held exempt from the payment of revenue, whether badshahee or otherwise, has been forged, or that the name of the original grantee has been erased and any other name substituted, or that any name not in the original grant has been erased or altered or inserted, or that the denomination or the terms of the tenure in the original grant have been erased or altered, or that the date of the grant has been changed, or that the grant has been antedated, the grant is to be adjudged null and void, as far as regards the exemption of the land from the payment of revenue, and the land is to be subjected to the payment of revenue accordingly. And any person by whom any such fraud appears to have been committed, or who has been concerned therein, is, provided the court is of opinion that there are sufficient grounds for a criminal prosecution, to be committed or held to bail (according to the circumstances of the case) to take his trial before the sessions court.* *Beng. Reg. XIX. 1793, sect. 18 ; and Reg. XXXVII. 1793, sect. 13. Ben. Reg. XLI. 1795, sect. 18 ; and Reg. XLII. 1795, sect. 13. Ced. Prov. Reg. XXXI. 1803, sect. 13 ; and Reg. XXXVI. 1803, sect. 13.*

Persons concerned in forging lakhiraj grants, or altering them in any respect, liable to a criminal prosecution.

* See para. 4535.

4533. If any person or persons shall at any time be suspected, on sufficient grounds for commitment, of counterfeiting or falsifying any entry in any of the register books ordered to be kept, or any certificate such as is directed to be granted, by this regulation [for the registry of deeds], he or they are to be prosecuted on the part of government in the criminal court of judicature ; and the several registers are, as agents for the prosecution, to adopt every legal measure in their power for the proof of the crime, and the due execution of the laws against the offender. *Beng. Reg. XXXVI. 1793, sect. 12. Ced. Prov. Reg. XVII. 1803, sect. 12.*

Registers of deeds are to prosecute criminally any person counterfeiting or falsifying any entry in the register books.

4534. Any putwaree who alters, fabricates, falsifies, or mutilates, the accounts of the village to which he belongs, or furnishes to the canoongoe or collector false, fabricated, or mutilated copies of those accounts, is to be held and considered guilty of forgery ; and is liable, on conviction before a sessions court, to the penalties which are or may be prescribed for that offence in the regulations ; and any person, who causes or procures any such forgery, is liable to the same penalties as those convicted of having actually committed the offence.—This rule is applicable to all native agents employed by proprietors or farmers of land in the management of their estates or farms, or in keeping the accounts relating to them ; and to proprietors or farmers of land, or their gomastahs or other officers, where no putwaree is appointed. Reg. XII. 1817, sects. 27, 30, and 33.

Putwaree altering, fabricating, falsifying, or mutilating, the accounts of his village, or furnishing false, fabricated, or mutilated copies of the accounts—is to be held guilty of forgery ;

but the intent must be fraudulent.

4535. In order to obtain conviction under the preceding rule, it must be shown that the putwaree had a fraudulent intention, and was not acting in good faith. Reports *W. P.* 1855, part 1, page 18.

Commitment.

Magistrates are not to receive charges of forgery, or of knowingly giving effect to false and fabricated papers, in cases before other courts ;

4536. Within the territories subject to the presidency of Fort William in Bengal except the local limits of the courts established by her majesty's charter, the magistrates are not to receive any charges of forgery, or of procuring or causing forgery, or of fraudulently issuing and publishing as true, or otherwise fraudulently giving effect to or attempting to give effect to false and fabricated deeds and papers, knowing the same to be false and fabricated, which may be preferred by parties to civil or criminal cases, in respect to deeds and papers offered in evidence in such cases against the adverse parties to such cases, or other persons, except as provided in the next following section. Act I. 1848, sect. 1.

unless such courts make the cases over to them.

4537. In cases pending before any civil or criminal court (except the court of the magistrate, or of any officer exercising the committing powers of a magistrate) in which there appears to the court sufficient grounds for sending for investigation to the magistrate a charge of any of the offences specified in section 1 of this Act, the court is to send the party or parties accused in custody to the magistrate, together with the evidence and documents relevant to the charge, and is to take a recognizance from each of the witnesses who have given such evidence to appear before the magistrate, who is thereupon to receive such charge and to proceed with it in the usual course. Provided always that nothing herein contained is to be construed to affect the powers vested in session judges in cases of forgery by sect. 6. Reg. II. 1807. Act I. 1848, sect. 2.

Session judge how to proceed if any witness or party attending the court is guilty of such offence.

4538. Whenever a witness giving evidence before a sessions court is considered by the judge of that court to be guilty of forgery, in any trial or matter depending before the court, and the whole of the witnesses required for the proof of the charge and for the defence of the accused are also in attendance, it is competent to the session judge to direct the magistrate to commit the person so charged for immediate trial before the sessions court. Provided that nothing in this section is to be construed to authorize the conviction or punishment of any person, charged with the crime specified, until he has been regularly put upon his trial ; or until any material evidence which he has to offer in his defence has been received and duly considered. Reg. II. 1807, sect. 6.

4539. In all cases of forgery brought to light in the course of criminal judicial proceedings, it is incumbent on the session judge to conform to the rule prescribed above ; and it is not optional with him to declare the party aggrieved by such forgery at liberty to institute a prosecution in the criminal court. C. O. No. 225 of vol. 3.

The same rule applies to the courts of revenue officers acting judicially.

4540. For the purposes of this Act, the expression "civil courts" is to be held to include all revenue officers acting judicially. Act I. 1848, sect. 5.

Act I. 1848 applies only to deeds and papers offered in evidence.

4541. The procedure laid down in Act I. 1848 is restricted by the terms of that enactment to deeds and papers offered in evidence. In all other cases of forgery brought to light in the course of judicial proceedings, the *Western Court* holds that the C. O. of the 13th

March, 1846 (No. 225 of vol. 3), which directs the courts to conform strictly to the rules prescribed for adoption in cases of perjury by the provisions of sect. 2, Reg. III. 1801, sect. 3, Reg. VIII. 1813, sect. 14, Reg. IV. 1793 (corresponding with sect. 8, Reg. III. 1803), and sect. 14, Reg. XVII. 1817, is to be regarded as the authoritative rule of procedure. In such cases [therefore, according to this ruling of the *Western Court*] it is not optional with the civil courts either to commit the accused for trial before a special sessions or to direct a prosecution for forgery, or to declare the party aggrieved by such forgery at liberty to institute a prosecution in the criminal court, as to them may seem fitting; but it is incumbent upon the judge to commit the case at once to the sessions under the rules quoted. C. O. S. D. A. No. 11, April 5, 1853, *W. P.* It is to be observed however that, in the cases which have been reported, the civil courts have not committed the prisoners, but have forwarded the papers to the magistrate, who has conducted the proceedings as in a private prosecution; see cases quoted below in paras. 4547, 4548, and 4556. And this procedure which has been adopted by the *Calcutta Court* appears to be correct.

In other cases before civil courts the *Western Court* holds that the judge must proceed under the rules previously in force.

4542. Where a document brought for registry was found to be forged, and the register of deeds sent the parties to the judge, and the judge directed the magistrate to try the accused parties and to commit them for trial if the charge should be proved, it was held that such course was illegal, as no case was pending in the civil court; the proceedings were quashed, and the aggrieved parties were left to commence proceedings in the usual course. The provisions of Act I. 1848 are confined to cases before the civil and criminal courts. Consequently prosecutions for forgery brought to light in proceedings before a register of deeds must be instituted before the magistrate, in the same manner as for any other forgery not committed before a civil or criminal court, i. e. on the information on oath or solemn affirmation of the aggrieved person. Reports *L. P.* 1854, part 2, pages 533 and 624; and 1855, part 1, page 651.

The *Calcutta Court* holds that when no case is pending the civil courts cannot interfere;

4543. The rules for the prosecution of forgeries under Act I. 1848, are not intended to exclude from the cognizance of the magisterial authorities prosecutions for forgery, which may be instituted irrespectively of proceedings in any civil or criminal court. The magistrate is prohibited by the above law only from entertaining charges preferred by parties to *pending* civil or criminal cases, without the sanction of the presiding authority of the court in which they may be pending. C. O. No. 225 of vol. 3. Reports *L. P.* 1854, part 2, page 624.

that magistrates are prohibited from entertaining charges of forgery only when they are preferred in regard to papers filed in suits pending in other courts;

4544. When the case is made over to the magistrate by a collector not acting judicially, the charge must be preferred on oath, as required by sect. 4, Reg. IX. 1807. Reports *L. P.* 1851, page 1666; and 1855, part 2, page 21.

and that the charge must be preferred on oath to the magistrate, if Act I. 1848 is not applicable;

4545. In the case of a forged mokhtarnamah filed in the collectorate with a view to obtain a sum of malikana, which was not due, it was held that the collector acted correctly in making over the case to the magistrate on the prosecution of government, as in the event of obtaining such money the government would have been the party defrauded. Reports *L. P.* 1854, part 2, page 659; and 1855, part 1, page 156.

or by the government pleader, where government is the party defrauded.

Act I. 1848 refers to miscellaneous as well as to regular cases.

4546. Where the prisoner altered a certificate for the refund of stamp duty and obtained thirty-two instead of sixteen rupees, and the civil judge sent the case to the magistrate for investigation, the proceedings were considered regular, because Act I. 1848 refers to miscellaneous as well as to regular cases. Reports *L. P.* 1857, part 2, page 83.

In a miscellaneous case arising out of a fraudulent alteration of a document in the judge's own office, he can refer the case to the magistrate, but not under Act I. 1848.

4547. Where a person applied to the civil judge for copy of a document with the intention of filing it in a suit pending before the moonsiff, and the prisoner took the opportunity of making a fraudulent alteration in the original, it was held that Act I. 1848 did not apply, as no case was pending; and that the judge acted rightly in making over the case, under C. O. No 225 of vol. 3, to the magistrate who was legally competent to commit the parties, on the charge preferred by the record keeper of the judge's office to his superior, and by him referred to the magistrate for investigation. Reports *W. P.* 1854, part 2, page 524. In that case the copy had not been taken out and filed in the civil court; but even in the case where a record of his own office was fraudulently altered with a similar intent, and the copy was taken out and filed in the civil court, it was held that the magistrate was justified in taking up the case without waiting for any order of reference from the civil court. Reports *W. P.* 1855, part 2, page 885. In these cases it is to be observed that the *copies* could not be said to be forged or fraudulently altered, and the cases were necessarily initiated by the offices in which the fraudulent alterations of the original documents were made.

Where a document was altered in the magistrate's office and a copy of it so altered was filed in the civil court, held that the magistrate could proceed without reference from the court.

Where a forged document was filed in execution of decree, the *Western Court* held that the court was justified in referring the case to the magistrate without reference to Act I. 1848;

but in a similar case, the *Calcutta Court* sanctioned a trial instituted under that Act.

4548. When the collector judicially decreed the release of certain attached grain, and a forged receipt of the previous release of it was filed by the kazeer in order to conceal official laches, it was held that the document was not filed while the case was pending, and that the collector was therefore justified in making the case over to the magistrate without reference to the rules of Act I. 1848. Reports *W. P.* 1855, part 1, page 938.

4549. But where a forged mokhtarnamah was filed in a civil court with an application to stay a sale in execution of decree, and the principal sudder ameen made over the proceedings and parties to the magistrate under Act I. 1848, the sentence passed by the sessions court was confirmed on appeal. Reports *L. P.* 1852, part 2, page 901.

A charge of forging a vakalutnamah in a civil court may be preferred direct to the magistrate, because it is not a paper offered in evidence.

4550. The court held that a magistrate was justified in taking up a charge of forgery not sent to him by the civil court, but preferred by an individual, who alleged that certain parties had forged and uttered a vakalutnamah as in his name in a case disposed of in the civil court two months previously, under which a fictitious confession of judgment was given in his name, he really knowing nothing whatever of the matter. The ground of this ruling was that the vakalutnamah was not "a deed or paper offered in evidence by an adverse party." The principle of Act I. 1848, and of the laws generally regarding forgery and perjury is that, where parties are or may be before the court trying the case, allegations of the above class of offences, in regard to deeds and papers produced in proof of the case, ought to be brought, and can best be determined on, by the court before whom the whole case is under examination; and that a subsequent liberty of prosecution before a magistrate, on the same matter, would only lead to serious abuse. This principle seems obviously quite inapplicable, when the allegation is that a party was not before the court

trying the case at all, knew nothing of the suit in which a false admission was recorded in his name, and could therefore have had no means of bringing any charge before that court. In such a case there is nothing in the spirit or intent, or still more certainly in the letter, of Act I. 1848, which restricts a direct application to the magistrate, or the powers of the magistrate himself. Reports *L. P.* 1851, page 1. On the ruling contained in the above case the court held that it was not competent to the civil court to entertain a charge of forgery of a vakalatnamah; and that such charge *must be* preferred direct to the magistrate. Reports *L. P.* 1851, page 1115. But where a magistrate, after receiving such case, allowed the prosecutor on his own petition to stand as plaintiff in the same position in which he would have been if the civil court had taken no notice of the case, it was held that the indictment was good, and that the irregularity of the civil court had been corrected. Reports *L. P.* 1855, part 1, page 789.

4551. A subordinate civil court is competent to send a charge of forgery direct to the magistrate for enquiry. He need not send it to the judge for reference to the magistrate. Reports *L. P.* 1856, part 1, page 345.

Subordinate courts should refer direct to magistrate.

4552. No appeal lies to the judge from the order of a subordinate court passed under Act I. 1848. Reports *W. P.* 1855, part 1, page 65.

No appeal lies from order under the Act.

4553. Where a forged document was filed in evidence in a summary suit, and the collector took no notice of it, it was held that the moonsiff was justified in founding on it a criminal prosecution, when the papers came before him in a regular suit brought to set aside the collector's award. Reports *W. P.* 1858, part 2, page 821.

A forgery overlooked in the court in which the paper was filed, may be taken up by another court only when the case comes regularly before it.

4554. But where a civil suit was pending in the moonsiff's court, and the judge, on the petition of the defendant accusing the plaintiff of forgery, sent for the case, and ultimately, without trying the civil claim judicially, made over the charge of forgery to the magistrate, it was held that his proceedings were illegal, as there was no suit pending in his court. *N. A. R.* vol. 6, page 318.

4555. Under the provisions of Act I. 1848 it is not competent to a session judge *suspecting* forgery, or doubting the genuineness of a document, to direct a magistrate to institute enquiries, and to collect evidence, with a view to ascertain whether a deed, filed with the proceedings in a case before him, be a forgery or not; nor is it competent to a magistrate to receive and proceed with a case so brought before him. If however there is enough on the record to afford strong grounds for presuming that a person has either forged a deed himself, or uttered it knowing it to be a forgery, it is competent to the judge to send him, charged with that specific crime, together with the necessary evidence at once to the magistrate to be tried on such a charge. *N. A. R.* vol. 6, page 284. It is not necessary to the legality of such procedure on the part of the civil court that any party should prefer a charge of forgery before it. The judge may originate the charge and proceed *proprio motu*. Reports *L. P.* 1854, part 1, page 454.

A case cannot be sent to a magistrate for trial without strong grounds for presuming forgery.

The civil court proceeds *proprio motu*.

4556. When a case is made over to the magistrate by a civil court, either under Act I. 1848 or under C. O. No. 225 of vol. 3, it must be prosecuted in regard to those persons only

The magistrate cannot prosecute any parties not es-

pecially mentioned
by the court ;

but it is not ne-
cessary that the
civil court should
make them over
in custody.

Omission of name
cannot be rectified
after disposal of
suit.

It is not neces-
sary that the ori-
ginal suit should be
pending, if it has
been transferred to
the miscellaneous
file.

And it is suffi-
cient if the pro-
ceedings in the
civil court com-
mence while the
case is pending.

Private prosecu-
tions.

Collector may
prosecute on the
part of the court
of wards ;

whom the civil court indicates. The intent of the law is clearly that the criminal authorities shall not initiate proceedings against any person not distinctly charged by the civil court in which the forged deed is filed. Reports *W. P.* 1853, part 1, page 347 ; and 1855, part 1, page 200.(a) The letter of the law requires that the accused parties should be made over in custody ; but the intention is sufficiently complied with, if the civil court indicates by name in the proceeding, under which it refers the case for investigation, the particular party or parties whose conduct is to form the subject of judicial enquiry. Reports *W. P.* 1853, part 2, page 1264 ; and 1855, part 1, page 948. The omission of the names of any of the parties concerned cannot be cured by a subsequent proceeding of the civil court held after the conclusion of the case. Reports *W. P.* 1856, part 1, page 68.

4557. Although the original suit has been concluded, it is sufficient, if the case continues to be borne upon the file of the civil court in the miscellaneous department, pending a final order regarding the reference of the case to the magistrate under Act I. 1848, and if an order be eventually passed for such reference. Reports *W. P.* 1856, part 1, page 68.

4558. And where the enquiry into a charge of forgery was commenced while the case was pending in the civil court, the *Western* court held that the proceedings in the sessions court were not vitiated by the fact that the case was no longer pending when the prisoner was sent by the court to the magistrate. Reports *W. P.* 1851, page 29 ; and 1855, part 2, page 338.

4559. A private individual may prosecute for forgery or uttering a forged document. And where a minor under the court of wards is the person interested, the collector, as the legally constituted agent of the court of wards, is competent to prosecute on the part of that court without any special authority from the board of revenue or the commissioner. Reports *L. P.* 1852, part 2, page 424.

(a) This ruling appears questionable. The order of reference passed by the civil court under Act I. 1848 is only equivalent to the credible information, which authorizes a magistrate to initiate proceedings in the case of a heinous offence without the written complaint supported by an oath, which would otherwise be requisite. After such legal initiation, the Act requires him, "to proceed with the charge in the usual course ;" and that in the case of any other offence would involve the investigation of all the circumstances of the case and the commitment for trial of every person against whom the evidence adduced for the prosecution establishes the charge. The intent of the law is inadequately set forth in the judgment quoted in the text. It is to prevent the criminal courts from allowing the initiation of charges which would embarrass the proceedings of the civil court, not to obstruct the prosecution of any guilty person. The rule was established by Reg. III. 1801 in regard to charge of perjury, because it was found to be a very prevalent practice for parties to prefer unfounded charges of perjury against the witnesses of their opponents ; and it has since been made applicable to charges of forgery, as a cognate class of offences tending to the same embarrassment. But it is not contended, nor is it possible, that the proceedings could be in any way embarrassed by the arrest and punishment of other parties than those named by the court, when such court has duly authorized the magistrate to investigate the case. The difference between perjury and forgery, when brought to light in a civil court, is that in the former the offence is complete in itself, while in the latter a protracted enquiry is requisite before proof sufficient to convict the guilty parties can be adduced. This ruling of the court therefore affords an effectual screen from punishment for all those (including possibly the real forgers and instigators) whose names do not appear in the summary enquiry of the civil court ; and consequently its correctness may be considered at least doubtful, since it is opposed to the spirit, and is not strictly required by the letter, of the law.

4560. Where a case of forgery was taken up by the magistrate as sent by the collector, acting as agent for the court of wards, and not *judicially*; and no charge on oath was preferred to the magistrate; the proceedings of the magistrate and the commitment to the sessions, and consequently the trial, were all held to be invalid, and quashed. The collector was informed that if, acting as agent for the court of wards, he was desirous of prosecuting the prisoners, he must proceed to prefer his charges in conformity with the Regulations and Acts in force. Reports *L. P.* 1851, page 1666.

but in such case the proceedings must be initiated before the magistrate by a written charge supported by an oath.

4561. The *Calcutta Court* held that a charge of uttering a forged document cannot lie against the witnesses called to prove it merely on the ground of their attesting it on oath. This was ruled in the case of witnesses who swore before the register of deeds that they had witnessed the signing of a forged deed. Reports *L. P.* 1856, part 1, page 843. But the *Western Court* held in opposition to the *Calcutta Court*, after correspondence between the courts, that a civil court, making over to the magistrate a case of forgery, can at the same time make over the subscribing witnesses, who have attested the suspected deed, on a charge of aiding and abetting in giving effect to forged deeds, instead of proceeding against them for perjury. They hold that, in the majority of such cases, parties falsely attesting and verifying forged instruments as subscribing witnesses must be regarded as accomplices in the main offence, and, indeed, as part of the machinery indispensable for the completion and execution of the fraud. Reports *W. P.* 1852, page 1349; and 1855, part 1, page 948.

Whether attesting witnesses to a forged deed may be committed as accomplices in the uttering.

4562. When the principal sudder ameen took up a charge of forgery, and having completed the enquiry directed the magistrate to prepare the calendar agreeably to the roobakarec and to commit the prisoners for trial before the sessions court; and that officer made the commitment without taking any evidence; the sudder court held that the proceedings were irregular and that the subsequent trial and conviction by the session judge were vitiated thereby. Under the provisions of Act I. 1848, the magistrate was bound to proceed in the usual course, *i. e.* by regular enquiry and examination of the parties and the witnesses, making the commitment only if he should consider the charge proved. Reports *W. P.* 1851, page 373.

The magistrate cannot commit on evidence before the civil court. He must institute a regular enquiry.

4563. Magistrates are required to draw up charges as nearly as is possible in the language of the law; that is, describing the offence as a fraudulent and injurious fabrication, or (as it may be) alteration, of a written deed or other paper, and stating explicitly in what the alteration or fabrication consists, or how much of the paper it comprises. C. O. No. 57, May 25, 1858. *L. P.*

Charges how to be drawn up.

4564. In a case of uttering, the place where the uttering took place must be specified in the charge. Reports *L. P.* 1856, part 1, page 843.

4565. A conviction of procuring forgery cannot be had on a charge of forgery. Reports *W. P.* 1853, part 2, page 1063.

4566. Where the acting principal sudder ameen at the time of dismissing a civil suit, considered that there was proof of perjury and its subornation against the witness and plain-

A case of forgery made over to the magistrate by a

civil court is not vitiated by the mere reference at the same time of the charge of perjury

tiff, and authorized further enquiries, which elicited the evidence of its kindred offence of forgery; and the principal sudder ameen completed the enquiry and made over the defendants to the magistrate on the charge of forgery and perjury, the court held that the proceedings were quite regular as regarded the forgery, and that they were not vitiated by the irregularity in regard to the perjury. Reports *W. P.* 1851, page 66.

Separate trials must be held, where the civil court commits for perjury and the magistrate commits for forgery in the same case.

4567. When the civil court commits for perjury, and the magistrate commits for forgery arising out of the same transaction,—and no other course can be legally adopted in the case of a forgery supported by perjury, which has been brought to light in the civil court,—it is not competent to the session judge to dispose of both commitments in a single trial. He must hold two separate trials. Reports *W. P.* 1852, page 1349; and 1853, part 1, page 316, and 347.

Penalties.

What sentence may be awarded in cases of forgery, or procuring forgery.

4568. If any person amenable to the jurisdiction of a sessions court is convicted before that court whether by his free and voluntary confession, or by the testimony of credible witnesses, or by strong circumstantial evidence, of forgery, or procuring forgery, as defined in Reg. II. 1807, or Reg. XVII. 1817; and is, in consequence, by the futwa of the Mahomedan law officer of the sessions court, declared liable to discretionary punishment (*tazeer*, *acoobut*, or *seasut*); the session judge, provided he concurs with the law officer in the conviction of the prisoner, is to sentence him to receive thirty stripes [now commutable to two years' additional imprisonment], and to be imprisoned in banishment from the district for the period of seven years, unless the judge, on consideration of all the circumstances of the case, is of opinion that any part of the prescribed punishment is too severe; in which case he is authorized to mitigate the sentence to imprisonment, for any period not less than three years. Reg. II. 1807, sect. 3, cl. 1. Reg. XVII. 1817, sect. 9, cls. 1 and 2.

Session judge may refer the trial for mitigation of such sentence

4569. If in any instance the session judge is of opinion, that a further mitigation or remission of punishment is necessary, he is, provided he concurs in the conviction of the prisoner, to pass sentence according to the preceding clause, and to refer the trial, with his sentiments at large, for the final sentence or order of the *nizamut adawlut*. Reg. XVII. 1817, sect. 9, cl. 3.

Trial to be referred, if session judge differs from his law officer.

4570. If the session judge differs in opinion from the law officer of his court, with respect to the conviction of the prisoner, he is not to pass any sentence, but is to transmit his own and the magistrate's proceedings, with his sentiments in a letter to accompany them, for the sentence of the *nizamut adawlut*. Reg. II. 1807, sect. 3, cl. 2.

Sentence to be passed by the *nizamut adawlut*.

* But see *para.* 1480.

4571. In cases of reference to the *nizamut adawlut*, this court, after taking the futwa of its law officers,* is, if the prisoner be convicted, to sentence him to any punishment deemed proper, not exceeding that specified above. Reg. II. 1807, sect. 3, cl. 3.

Sentence to be passed on persons convicted of knowingly and fraudulently uttering forged instruments.

4572. If any person is convicted before a sessions court, or the court of *nizamut adawlut*, of the offence of fraudulently issuing and publishing as true, or otherwise fraudulently giving effect, or attempting to give effect, to fabricated deeds and papers, knowing the same to be false and fabricated; he is to be sentenced to imprisonment for such period, not

exceeding seven years, as the session judge deems adequate to the nature and circumstances of the case. In every instance of a repetition of the offence, after a previous conviction and discharge, the session judge may further, at his discretion, sentence the offender to receive corporal punishment [now commutable to 2 years' additional imprisonment]. If a person twice convicted and discharged be again found guilty of any of the offences above specified, and the session judge is of opinion that he ought to be imprisoned for a longer period than seven years, he is to refer the trial,* with his sentiments, for the sentence of the nizamut adawlut, in pursuance of cl. 7, sect. 2, Reg. LIII. 1803. Reg. XVII. 1817, sect. 10, cls. 1 2.

* But the judge may refer any case, in which he considers the sentence within his competence inadequate. See para. 1285.

4573. A charge of uttering a forged document must contain an averment of fraud. Reports *W. P.* 1853, part 2, page 1172.

Charge of uttering must include fraud.

4574. The attempt to register a forged bond in the office of register of deeds was held to be punishable as an uttering, or issuing and publishing. Reports *L. P.* 1855, part 2, page 322.

To register a forged deed is to utter it.

4575. When a person causes his agent to file a forged document in court, he is himself guilty of uttering it. Reports *W. P.* 1855, part 1, page 712.

To file by an agent is uttering.

4576. The giving by A to his own pleader, for the purpose of being filed in court, a document found afterwards to be forged, which the pleader, however, from suspicion of forgery, did not file, but returned to A, and which A did not further endeavour to use, is not an uttering or attempting to utter, or give effect to, a forged document, within the penalty of the law. The case would be different if the pleader, though innocently on his own part, had filed in court the document so given to him; or if A had given the document to the pleader, and solicited or incited him to file it, with a knowledge on his (the pleader's) part of its being a forgery. Reports *L. P.* 1851, page 1659.

The uttering is not complete by giving the forged document to an agent until a fraudulent use has been made or attempted to be made of it by the agent.

4577. Knowingly to file a forged document before the court of wards is an utterance of the forged document under these provisions. And the collector, as the legally constituted agent of the court of wards is competent to prosecute on the part of that court. Reports *L. P.* 1852, part 2, page 424.

To file a forged document before the court of wards is to utter it.

4578. Measurement papers must be considered as coming within the denomination of "deeds and papers," referred to in the above provision. Const. No. 1061.

The above applies to measurement papers.

4579. As the above provision prescribes no minimum of punishment for the offence of uttering forgeries, the judge being competent to pass any sentence he considers proper not exceeding seven years, a reference for mitigation is unnecessary. N. A. R. vol. 2, page 244. Reports *L. P.* 1852, part 2, page 330.

No minimum of punishment is prescribed in the above provision.

4580. A prisoner, convicted of forging a kabalah and receipt and producing them in court, was sentenced to imprisonment for 7 years; four others, convicted of aiding and abetting in the forgery and of perjury in attesting by their signatures the forged kabalah, to imprisonment for 5 years; and three others, convicted of privity to the forgery and altering a pottah, to imprisonment for 3 years. N. A. R. vol. 4, page 112. A prisoner, convicted

Precedents. Cases of forgery—of a kabalah and receipt;

of hoondees :	on strong presumption of forging four hoondees, and of fraudulently selling them and appropriating the price of them to his own use, was sentenced to tusheer, godna ^(a) , stripes, and imprisonment with hard labour for 7 years. N. A. R. vol. 1, page 339. Two prisoners
of bonds ;	convicted of forging five bonds for the purchase of crops were sentenced to tusheer and imprisonment for 4 years. N. A. R. vol. 4, page 114. Where the prisoner held the bond of a person, to whom he had lent a sum of money, on plain paper bearing interest at 24 per cent. per annum; and after the death of that person forged and filed a bond written on stamped paper for the same amount, and bearing the date of the original, but fixing the interest "at the rate allowed by government," he was convicted of forgery, and the court refused to mitigate the sentence of imprisonment for 3 years passed on him by the judge
of a false vakalutnamah ;	of circuit. N. A. R. vol. 2, page 95. A prisoner a plaintiff in a suit in a moonsiff's court convicted of causing to be forged, and another a vakeel of the court of forging, the names of three witnesses on a vakalutnamah; and both of causing the said vakalutnamah with the forged names of the three witnesses to be filed in the civil court with a view to obtain a decree for certain landed property by a pretended admission on the part of the defendant of the justice of the plaintiff's claim; were sentenced each to imprisonment for 4 years with labor in irons: the vakeel had already been sentenced in another case for issuing forged stamp paper to 2 years' imprisonment. N. A. R. vol. 5, page 105. So, three prisoners, convicted of having caused a forged ikbal-dawa, or acknowledgment of a claim, to be drawn up and filed in court, and of having fraudulently caused the same to be falsely attested, were sentenced to imprisonment for 4 years. N. A. R. vol. 3, page 93. A prisoner convicted of forging receipts during four years for the pension of a deceased person by affixing thereto the seal of the deceased, and another prisoner his servant convicted of uttering the forged receipts by presenting them and receiving the money, were sentenced to imprisonment for 3 years. N. A. R. vol. 2, page 244.
of a false ikbal dawa ;	
of pension receipts.	
Cases of fraudulent and injurious alterations—of vouchers ;	4581. A mohurir of an indigo factory, convicted of forgery in having altered certain vouchers of payments in order to defraud his employer, was sentenced to tusheer and imprisonment for 7 years. N. A. R. vol. 1, page 365. The prisoners altered a common receipt for rent so as to make it appear like a receipt for money due under a decree of court, and filed it in court in reply to an application from the person who gave the receipt for the enforcement of a summary decree, which he had previously obtained against them: both prisoners were sentenced, one for the forgery, and the other for the uttering it, to imprisonment for 7 years. N. A. R. vol. 2, page 210. A petition presented to a collector by a party praying for copies of certain papers, was made over to the prisoner, the copyist of the office, for the purpose of transcribing the copies: the prisoner made an addition to the list of documents by inserting one, of which he wished to obtain a copy for himself, his object in so doing being apparently to save the price of the stamp paper on which would have had to petition the collector for the copy: this was held to be forgery, and
of a receipt for rent ;	
of a petition presented in a public office praying for copies of certain papers ;	

(a) The punishment of godna was awarded under cl. 1, sect. 3, Reg. II. 1807; but this is rescinded by cl. 1 sect. 12, Reg. XVII 1817. And tusheer was abolished by Act II. 1849.

he was sentenced to imprisonment for one year. N. A. R. vol. 5, page 174. The agent of a dak-contractor was convicted of opening the government dak wallet, after it had been despatched from the post-office, and extracting the telegraph, and altering the hour of arrival and despatch of the government mail with a view to defraud the government: the session judge passed sentence of two years' imprisonment with labor in irons; but the nizamat adawlut held that the crime established amounted to forgery, and directed him to pass the minimum sentence prescribed by cl. 2, sect. 9, Reg. XVII. 1817, and to refer the trial for the court's order should he think that punishment too severe. Const. No. 1099. A mohurir of a police thana, with a view to screen himself from the charge of having deputed a burkundaz only to enquire into a case of theft, falsified the magistrate's record to make it appear that the jemadar had been deputed in another case; this was held to be forgery, but of the lightest description, and the prisoner was sentenced to 6 months' imprisonment. N. A. R. vol. 2, page 99. The mohurir of a register's office convicted of altering the endorsement of a deed brought for registry, in order to screen himself from a charge of extortion for refusing to return the deed unless a fee of ten rupees were paid, was sentenced to imprisonment for 3 years, the court refusing to adopt the recommendation from the judge for mitigation of punishment. N. A. R. vol. 6, page 251. But where a mohurir in the office of a principal sudder ameen altered the date of an order, directing the issue of a sale-notice, with the intent only of screening himself from punishment for neglect of duty, he was acquitted on a charge of forgery on the ground that the alteration although fraudulent could not be injurious to any one. Reports *L. P.* 1857, part 1, page 453.

of a dak telegraph;

of a public record;

of the endorsement of a deed brought for registry by the mohurir, to screen himself from charge of extortion;

of an order directing issue of sale notice by a mohurir of a civil court to screen himself from punishment for negligence.

4582. A putwaree convicted of forgery in furnishing a mutilated return of the village accounts by omitting to enter therein 1200 beegahs of lakhiraj land, under sect. 27, Reg. XII. 1817, was sentenced to imprisonment for 3 years, without labor and irons. N. A. R. vol. 5, page 113.

Putwaree furnishing mutilated accounts.

4583. A prisoner convicted of issuing forged parwanas, knowing them to be such, and thereby fraudulently obtaining as the authorized tulubana and appropriating various sums of money, was sentenced to stripes and imprisonment for 7 years with labor: the prisoner had on a former occasion been sentenced to five years' imprisonment for a similar offence. N. A. R. vol. 4, page 83. Where the prisoners were convicted of having forged endorsements for tulubana on parwanas which they were directed to serve on certain parties, and of having thereby extorted unauthorized tulubana, they were sentenced to imprisonment for 4 years with hard labor. N. A. R. vol. 3, page 303. The nazir of the special deputy collector's office was convicted of issuing a forged roobakaree, knowing the same to be false and fabricated, and thereby fraudulently obtaining 356 rupees from the collector's treasury, with intent to defraud government, and was sentenced to imprisonment for 5 years. N. A. R. vol. 5, page 193. A prisoner convicted of having issued a forged note, purporting to be a draft drawn by the collector of Juanpore in favor of the prisoner on the collector of Benares for 4,700 rupees, knowing it to be forged, was

Cases of knowingly and fraudulently uttering--fabricated parwanas;

false endorsements on parwanas;

forged roobakaree applying for money;

forged draft for money;

- sentenced to imprisonment for 5 years. N. A. R. vol. 2, page 111. Where the prisoner filed a deed of sale which was a palpable forgery, having been executed very clumsily, it was held that the mere fact of filing it by the person interested in establishing its contents affords sufficient presumption that he uttered it knowing it to be forged; and he was sentenced to imprisonment for 2 years with labor. N. A. R. vol. 2, page 454.
- In order to obtain the more ready enforcement of a decree, the date was altered in seven different places from 1824 to 1825, and it was so presented in court with a petition for its execution; the decree-holder, his mokhtar, and his vakeel, who filed the document, were convicted of fraudulently attempting to give effect to a falsified instrument, knowing it to be such, and were sentenced to imprisonment for 2 years without labor and irons. N. A. R. vol. 3, page 28. A prisoner convicted of filing in a civil suit a forged receipt for money paid, knowing it to be such, and of subornation of perjury in producing a person to swear to the authenticity of the said receipt, was sentenced to imprisonment for 3 years with labor. N. A. R. vol. 4, page 56. Three prisoners, convicted of fraudulently issuing and publishing as true (by filing it in court) a forged receipt for money paid, knowing the same to be false and fabricated, were sentenced each to imprisonment for 4 years, and a fine of 50 rupees each in lieu of labor. N. A. R. vol. 5, page 181. Where the prisoner gave a receipt in a fictitious name for money received by him from a government treasury, he was sentenced to imprisonment for 6 months without labor or irons. N. A. R. vol. 5, page 59. A prisoner was convicted of having personated a dewanny chaprasi, and of having with others arrested the prosecutor by means of a forged summons; this was held to be forgery, and he was sentenced to imprisonment for 3 years. N. A. R. vol. 2, page 354.
4584. A prisoner convicted of having with him a forged note, and of having fraudulently carried it to the prosecutor with a view to obtain and embezzle money, was sentenced to imprisonment for three years. N. A. R. vol. 2, page 483.
4585. A prisoner convicted of having knowingly allowed a person to affix a fictitious signature to a kabuliyat, and of having concealed his knowledge thereof for his own purposes, which afforded strong presumption that he willingly and knowingly caused the forgery of the signature to the kabuliyat, was sentenced to 3 years' imprisonment with labor and irons. N. A. R. vol. 6, page 3.
4586. An authorized pleader of the civil court, though acquitted from want of positive evidence of the charge of forging a document and presenting it to the court, knowing it to be forged, was dismissed from office in consequence of suspicion arising from his having presented a forged deed and bringing forward false witnesses in support of it. N. A. R. vol. 1, page 293.

NOTE.

In English law the offence of forgery is defined by Blackstone to be "the fraudulent making or alteration of a writing to the prejudice of another man's right;" and by East to be "a false making, a making *malò animo*, of a written instrument for the purpose of fraud and deceit. But it is not necessary to the sustaining an indictment of

forgery at common law, that any prejudice should in fact have happened by reason of the fraud ; it is sufficient if it might have happened : nor is it necessary that there should be any publication of the forged instrument. The most usual kind of forgery is, where the party assumes the name and character of a person actually in existence, and by means of the credit attached thereto carries his fraud into effect : but the adoption of a false *description* and *addition*, where a false name is not assumed, and there is no person answering the description, has been held not to be forgery. A man may be guilty of forgery by the fraudulent making of an instrument, though in his own name ; as if he makes a feoffment of lands to J. S., and afterwards a deed of feoffment of the same lands to J. D. of a date prior to that of the feoffment to J. S. So, if a bill of exchange, payable to A. B. or order, come to the hands of another person named A. B., not the payee, who fraudulently indorses it for the purpose of obtaining the money, this is a forgery. Making an instrument in a fictitious name, or the name of a non-existing person, is equally forgery, as making it in the name of an existing person : and it is not necessary, in order to render the act forgery, that the party should gain any additional credit by the fictitious name. The circumstance that the party making the forged instrument has assumed, and been known by the fictitious name in which it is executed, for some time before the making, will not prevent its being a forgery ; there being no distinction whether the credit was given to the person of the prisoner, or the name assumed by him ; but there must be a fraudulent intent in the particular transaction. It is not material whether the forged instrument be made in such a way, as, were it true, it would be of validity, or not ; but then the false instrument must carry on the face of it the semblance of that which is counterfeited, and must not be illegal in its very frame. So, the false making of a will is forgery, although the supposed testator be alive. So a man may be convicted of forging an unstamped instrument, though such instrument can have no operation in law. It is not essential that the forged instrument should in all respects bear an exact resemblance to the real instrument which it purports to be ; it is sufficient if it bear a substantial resemblance, such as is calculated to deceive when ordinary and usual observation is given : but it is necessary that the forged instrument should in all essential parts bear upon the face of it the similitude of a true one, so that it be not radically defective and illegal in the very frame of it.—As regards the proof, it is seldom that direct evidence can be given of the act of forgery. In the case of negotiable securities, the evidence is usually applied to the uttering rather than to the forging, although both are usually charged. Where the instrument is not of a negotiable nature, as in the case of a bond or will, after proof that it has been forged by some one, a strong presumption necessarily arises against the party in whose favor the forgery is made, or who has the possession of it, and seeks to derive benefit from it. Evidence that the forged instrument is in the hand-writing of the prisoner, must, if unexplained, be necessarily strong evidence of his guilt. An intent to defraud is an essential ingredient to constitute the offence of forgery. The intent is mostly evidenced by the act itself, which, from its nature, leaves in general no room for doubt upon the point. The inference is frequently confirmed by the conduct and behaviour of the guilty party in the artifices and falsehoods which he employs for the purpose of effecting his object, or of avoiding detection. The subsequent uttering or publication of the forged instrument is admissible, and strong evidence to prove the original design of forging the instrument ; and whether the making or uttering of a forged instrument be done with an intent to injure a particular person as alleged, is matter of evidence for a jury. If several combine to forge an instrument, and each execute by himself a distinct part of the forgery, and they are not together when the instrument is completed, they are nevertheless all guilty as principals : as, if B make the paper, C engrave the plate, and D fill up the instrument, each without knowing that the others are employed for that purpose, they are all principals. So, if several concur in employing another to make a forged instrument, knowing its nature, they are all guilty of the forgery. *Roscoe's Digest.*

BOOK VIII.

OF SPECIAL RULES REGARDING PARTICULAR CLASSES OF PERSONS.

CHAPTER I.

OF EUROPEAN BRITISH SUBJECTS.

**Amenability.
Descent.**

4587. The parents of an individual being Europeans, he must be considered to be an European, without reference to the place of his birth. Const. No. 397.

**Illegitimate
children are class-
ed with their mo-
ther.**

4588. Illegitimate children should be classed with their mothers; and must be considered British subjects, European foreigners, or Americans, according as their mothers may respectively be British, foreign European, or American. Thus, the illegitimate son of an European British subject by a native mother can be tried by the local criminal courts on a charge of adultery: but a married woman, the legitimate child of a British father, is not amenable to the local courts on a similar charge preferred against her by her husband. Const. Nos. 806 and 978.

**How far the pri-
vileges extend in
the direct descent
of legitimate chil-
dren.**

4589. B, as the son born in wedlock of A, who was the son born in wedlock in British India of a European British subject, is clearly a British subject within the meaning of the charter of, and Acts relating to, the supreme court; and is not amenable to the jurisdiction of the mofussil criminal court. The circumstance that A's mother was an Armenian, and that B's mother was not a European British subject, makes no difference in this respect. These privileges certainly attach to the sons and grandsons: whether they extend further is an open question; but it seems that in respect of all persons descended legitimately from a male European British subject, and born in British India subsequently to the vesting of the sovereignty in the crown (*i. e.* from the beginning of the century) there is no limit, in point of degree of descent, to the rights of such persons to claim the privileges of British subjects. Opinion of Advocate General in C. O. No. 2, March 17, 1859.

**Example in a spe-
cial case.**

4590. In the case of a prisoner who alleged that his father was a German, and his mother a Scotchwoman, and that he was born at Madras, the advocate general gave it as his opinion that he must be considered a British subject amenable to the jurisdiction of the supreme court. But this opinion seems to require modification, especially as regards the mixed progeny of Europeans and natives; and cannot be considered as an established rule, since the nizamat adawlut objected to the doctrine, and held the prisoner amenable to the local courts on a ground which left the question still open. N. A. R. vol. 2, page 111.

4591. The criminal courts are not to proceed to try and sentence a person, whom they may themselves have fair reason from any cause to regard as probably not subject to their jurisdiction, without making all practicable inquiry to satisfy themselves on the point. C. O. No. 33 of vol. 4.(a) If the magistrate know that the prisoner is a European British subject, it is his duty, whether the prisoner claims exemption or not, to abstain from further proceedings against him as a magistrate. If, without any actual knowledge on the subject, the magistrate have reason to suppose that the prisoner is such a British subject, it is the magistrate's duty to ascertain from him, whether he alleges or denies that he is one; and, if he alleges that he is, to give him every facility, by allowing time and otherwise, for proving that he is, the burden of such proof being on him. A magistrate will not be justified, if he has reason to suppose that the prisoner is a European British subject, in proceeding against him as if he were not one, without first giving him a distinct opportunity of pleading that he is one. If he do not so plead, or be not able, upon time being allowed him for that purpose, to adduce any satisfactory proof of his being a European British subject, the magistrate will be quite warranted in proceeding against him. If he do so plead, and give proof or produce documents, which, although not amounting to full legal proof of his status, satisfy the court that he is really a European British subject, the magistrate should, without putting the prisoner fully to complete his proof by strict legal evidence, take up the case as a justice of the peace, and send it up to the supreme court, taking care to record distinctly the statement made by the prisoner that he is a British subject of lawful European descent. Opinion of Advocate General in C. O. No. 2, March 17, 1859.

Courts are to satisfy themselves as to their jurisdiction.

4592. In the event of its being found necessary to commit an European British subject for trial before the supreme court, it is necessary for the conviction of such person that there be direct proof of his amenability to that court. The mode of proof consists in the evidence of a credible person, who knows the accused, and his place of birth, or who has heard him declare of what country he is. C. O. 197 of vol. 3.

But in the supreme court the proof of jurisdiction lies with the prosecutor.

4593. The servants of the government, as all other of her majesty's subjects resident in India, are amenable to the courts of oyer and terminer and jail delivery and courts of general or quarter sessions of the peace in any of the British settlements in India, for all murders, felonies, homicides, manslaughters, burglaries, rapes of women, perjuries, confederacies, riots, routs, retainings, oppressions, trespasses, wrongs, and other misdemeanors, offences, and injuries whatsoever by them done, committed, or perpetrated, in any of the countries or parts of Asia, Africa, or America, beyond the Cape of Good Hope to the Straits of Magellan, within the limits of the exclusive trade of the East India company, whether the same be done, committed, or perpetrated against any of her majesty's subjects, or against any other person or persons whatever. 26 Geo. III. cap. 57, sect. 29.

Persons resident in India liable to what courts.

(a) This circular is founded on the judgement of the supreme court in the case of V. Foy, which is given at length; but it seems unnecessary to quote it here, since the rule laid down by the Advocate General, as given in the text, is more clear and useful.

Europeans not British subjects are liable to the local courts;—if British subjects, to the supreme court.

4594. All Europeans, not British subjects, are amenable to the authority of the magistrates and sessions courts within whose jurisdictions they are apprehended and brought to trial, in common with the natives of the country. But European British subjects, for all acts of a criminal nature, are amenable only to the supreme court of judicature at Fort William; and in the event of any charges being preferred against them, which may render them liable to a criminal prosecution in that court, the process detailed below is to be observed for their apprehension and trial. *Beng. and Ben. Reg. II. 1796, sect. 2, cl. 1. Ced. Prov. Reg. VI. 1803, sect. 19, cl. 1.*

European British subjects are not penally liable to the local courts.

4595. European British subjects have not by any Act of the legislature been made amenable to the local authorities in the administration of the penal enactments of the government of India. Const. No. 1296. Except in certain special cases; see *infra*; and several of the later Acts have been made applicable to them, as *e. g. paras. 306, 3302, 3339, &c.*

Offences committed in foreign territories are punishable by all courts of competent jurisdiction.

4596. All her majesty's subjects, as well servants of the government as others, are amenable to all courts of justice, both in India and Great Britain, of competent jurisdiction to try offences committed in India, for all acts, injuries, wrongs, oppressions, trespasses, misdemeanors, offences, and crimes whatever, by them or any of them done or committed in any of the lands or territories of any native prince or state, or against their persons or properties, or the persons or properties of any of their subjects or people, in the same manner as if the same had been done or committed within the territories directly subject to and under the British government in India. 33 Geo. III. cap. 52, sect. 67.

No person exempt from public duties, or public charges, or assessments, by reason of birth or descent;

4597. No person whatever, being the owner, holder, or farmer of any property in land, or in any emoluments issuing out of land, in any part of the territories under the British government, whether in perpetuity or for a term, or being a local agent or manager of any such property, is, by reason of his place of birth, or by reason of his descent, exempt from any public charge or assessment, or from any duty connected with the police, or with the salt or opium revenue, or from any duty whatsoever of a public nature, to which he would otherwise be subject, as the owner or holder of such property, or as a local agent or manager thereof. Act II. 1853, sect. 1.

but subject in such respects to the same laws as a native.

4598. For the non-payment of any such public charge or assessment, or for the breach of any such duty as aforesaid, or for any neglect or misconduct in the discharge thereof, every person, whatever may have been his place of birth, or his descent, shall be subject to the same laws, regulations, and procedure, and to the same jurisdictions, as if he were a native of the said territories. Act II. 1853, sect. 2.

Magistrate may enforce attendance of European British subject to give evidence.

4599. A British subject resident in the mofussil is not exempted from appearing as a witness in a criminal case pending in the local courts; and the magistrate has full power to summon such British subject, who ought to obey such summons and attend. It follows that the magistrate may enforce the attendance of such British subjects, as he would enforce the attendance of any other witness. In summoning a British subject and in enforcing obedience to such summons the magistrate should be guided by the law of procedure

in his own court, which is equally applicable to all persons summoned by him as witnesses ; and he may therefore, if he thinks fit, and the evidence of the witness is material, proceed under sect. 6, Reg. IV. 1973 [*scil.* sect 2, Reg. L. 1803, *see para.* 439] and seize the witness and bring him before his court. But a mofussil magistrate has no power to punish such witness if he refuses to give evidence when brought before him; for, although the British subject has no privilege exempting him from appearing as a witness in the local courts, yet he has a privilege exempting him from punishment by a mofussil court except in certain cases, and this is not one of such cases. If such a case should arise, he might be indicted in the supreme court for an obstruction of justice. It seems that an indictment will lie, when the court, whose process is disobeyed, has no power to attach* ; and the supreme court is bound to take judicial cognizance of the existence of the mofussil criminal courts, and is therefore bound to punish an offence committed by a British subject which is an obstruction of justice in such courts. As regards the expenses of witnesses, mofussil magistrates should be guided by the rules and procedure of their own courts ; but, if the witness be poor and refuse to attend, the tender of his expenses would probably be necessary to secure his conviction in the supreme court. The attendance of witnesses resident in Calcutta should be compelled by warrant regularly endorsed by one of the judges of the supreme court under Act XXIII. 1840. Opinion of Advocate General in C. O. No. 100 of vol. 4.

But if he refuses to give evidence, he must be committed to the supreme court.

* *Russell, on crimes and misdemeanors*, 497, note 2.

If the witness resides in Calcutta.

4600. If any offence, which by any Act of the governor general in council heretofore passed is declared to be punishable upon conviction by a magistrate, shall be committed by a European British subject beyond the local limits of the jurisdiction of her majesty's supreme courts of judicature, the offender, if not otherwise punishable, shall be liable, upon conviction before one of the said supreme courts of judicature, to the punishment to which by such Act the offender is declared to be liable upon conviction before a magistrate. Act XVIII. 1859, sect. 1.

Duties of magistrate and justice.

British subjects how punishable for offences which are by law made punishable in the mofussil upon conviction by a magistrate.

4601. If any offence, which by any Act of the governor general in council heretofore passed is declared to be punishable upon conviction by a magistrate, shall be committed by any person within the local limits of the jurisdiction of any court of judicature established by royal charter, the offender, if not otherwise punishable, shall be liable upon conviction before such court to the punishment to which by such Act the offender is declared to be liable upon conviction before a magistrate. Act XVIII. 1859, sect. 2.

Offenders how punishable, when such offences are committed within the local limits of the jurisdiction of Her Majesty's courts.

4602. Nothing in this Act shall extend to any case in which jurisdiction is expressly given to a justice of the peace to convict the offender. Act XVIII. 1859, sect. 3.

Jurisdiction expressly given to justice of the peace not to be affected.

4603. Whenever in any Act heretofore passed by the governor general in council the word "magistrate" is declared to include a justice of the peace, such justice of the peace shall not by virtue of such Act be deemed to have jurisdiction to punish any offence unless the same shall be committed within the local limits of the jurisdiction of any of the courts of judicature established by royal charter. Act XVIII. 1859, sect. 4.

Construction of the word "magistrate" in certain Acts.

Course to be adopted, whenever a European British subject, residing in the interior of the country, is guilty of any act of illegal violence, injustice, or oppression, towards the natives, in the prosecution of indigo, or other commercial transactions.

4604. The nizamat adawlut are to bring under the special notice of government every case in which, from the proceedings or information before them, they are satisfied that a European British subject, residing in the interior of the country, has been guilty of any act of illegal violence, oppression, or injustice towards the natives in the prosecution of indigo or other commercial transactions. And whenever such British subject appears to a magistrate, on satisfactory evidence, to have been guilty of any illegal act of the above description, and the proceedings held in the case are not referrible in regular course to the nizamat adawlut, he is to transmit a specific report of the facts of the case, with a copy of his proceedings, to that court; who, if they consider the alleged act of illegal violence or oppression to be proved, and to be of a nature demanding the notice of government, are to report their sentiments accordingly.(a) C O. No. 289 of vol. 1.

Report to be made to the commissioner of circuit of aggravated affray, in which the servants of an indigo factory are engaged.

4605. Magistrates are to submit to the commissioners of circuit, for their examination, every case of violent affray, attended with aggravating circumstances, in which the servants of an indigo factory are engaged, whether the European at the head of the establishment has been included in the charge or not: and the commissioner of circuit is to furnish with his annual report, in his capacity of superintendent of police, a specific statement of such cases. C. O No. 22 of vol. 2.

Magistrate how to proceed when natives are charged with offences in concert with European British subjects:

4606. Magistrates are to refrain from trying themselves, or committing for trial before the sessions court, natives charged with or suspected of being concerned with European British subjects in the commission of offences, until they have made a reference to the nizamat adawlut, and have been furnished with instructions for their guidance in the case. But the trial of a native is not vitiated under this order, if the name of an European is only indirectly introduced in the transaction for which the commitment is made: the European must be charged with the offence, or so far implicated as to warrant his commitment. C. O. No. 79 of vol. 1. N. A. R. vol. 2, page 73.

this order does not refer to the preliminary enquiry.

4607. The above order does not require the magistrate to apply for instructions in regard to the preliminary enquiry; it is only when the result of that enquiry leads to the commitment of the European, that the application becomes necessary. Letter of Nizamut Adawlut, August 12, 1836, in Mr. Cheap's edition of the Circular Orders.

Magistrate, who is qualified to act as justice of the peace, how to proceed when a charge is preferred before him against an European British subject, for an offence not within his competence as a magistrate or as a justice of the peace.

4608. If the magistrate before whom a charge is preferred against any European British subject, has taken the oaths of qualification as a justice of the peace, and thereby has become vested with the full power and authority of a justice of the peace, under the provision made for that purpose by the Act of 21 George III. cap. 65; the magistrate, upon the charge or information being lodged before him upon oath, is to proceed to the apprehension of the party accused; and, provided the evidence against him be sufficient to warrant the same, to his commitment for trial [or admission to bail], as he is authorized and required to do by virtue of his commission as justice of the peace; and if there appear to

(a) This rule is obsolete; it was issued at a time when European British subjects could not hold land in the mofussil, and when they were liable to be deported by order of government.

him sufficient grounds for committing such British subject for trial, he is to issue a warrant under his signature and official seal, directed to the sheriff of Calcutta, and commanding him to receive the prisoner into his custody for trial at the ensuing sessions; he is likewise to bind over the prosecutor to repair to Calcutta before the session next ensuing, and is to take recognizances from the witnesses for their appearance at the trial. *Beng. and Ben. Reg. II. 1796, sect. 2, cl. 2. Ced. Prov. Reg. VI. 1803, sect. 19, cl. 2.*

4609. Whenever a magistrate who has taken the oaths of qualification as a justice of the peace, holds any European British subject to bail, or deems it necessary to commit any such person to the jail of Calcutta, to take his trial before the supreme court of judicature for any offence of a criminal nature; the magistrate is to transmit the original depositions taken on the occasion (together with translations of any papers not being in the English language) to the clerk of the crown. *Reg. XV. 1806, sect. 2, as amended by Act XXII. 1854.*

If he holds to bail or commits, the papers are to be transmitted to the clerk of the crown.

4610. When depositions are taken in the mofussil before one of her majesty's justices of the peace, the correct as well as the convenient course is for the justice of the peace to send them in the native character and also in the English language, the language of the court, and to sign both with a statement in English to the effect that they are taken before him as a justice of the peace. (a) Letter from the Clerk of the Crown to Magistrate of 24 Pergunnahs, December 2nd, 1852.

Original vernacular proceedings with English translation to be sent to the supreme court.

4611. Whenever a European British subject is charged on oath before a magistrate, who has not taken the oaths of qualification as a justice of the peace, with a criminal offence which according to the law of England is not bailable, the magistrate is to make a summary inquiry into the circumstances of the charge without delay; and if, after making such inquiry, he is of opinion, that there are grounds for bringing the person accused to trial before the supreme court of judicature, he is to send the person accused under safe custody to her majesty's justices of the peace at the police office in Calcutta, accompanied by the witnesses against the prisoner, with a letter, stating the nature of the case, requesting that the justices at Calcutta will take the necessary measures for bringing the person accused to trial before the supreme court of judicature. The magistrate, by whom the prisoner is sent to Calcutta, is at the same time to transmit a copy of all the proceedings held on the occasion (together with translations of any papers not being in the English

Magistrate, not qualified as justice of the peace, how to proceed on receiving charge against such person, if the offence charged is not bailable;

(a) This was written by desire of the chief justice in reply to the following remarks offered by the magistrate in regard to certain translations of depositions made by the interpreters of the supreme court. "One absurd mistake runs through the whole, and renders the depositions nearly unintelligible. There being no system of punctuation in Hindostanee or Bengalee, it is usual at the close of a sentence to insert in the former language the word "fukut," and in the latter "itee," to show that the sentence is finished. The words are most correctly represented in an English translation by a full stop; but your interpreter has thought proper in every sentence to translate them respectively into the English words "only" and "thus far." It is hardly worth while perhaps noticing his translation of the word "huzoor," as it has always been a favorite one with the interpreters of the supreme court. I may remark however that it is just as correct to translate "huzoor" "the presence," as it would be in interpreting from English into Hindostanee to translate "your worship" "tumhara pooja," or "your honor" "tumhara izzut." The equivalent in English for the term of respect "huzoor" is "his worship" or "his honor."

language) to the secretary to government, to enable the government to determine whether the prosecution should be undertaken by the law officers of government, and at the public expense, or otherwise. *Beng. and Ben. Reg. II. 1796, sect. 2, cl. 3. Ced. Prov. Reg. VI. 1803, sect. 19, cl. 3. Reg. XV. 1806, sect. 3.*

and how to proceed, if the offence charged is bailable.

4612. Whenever any person charges a European British subject before a magistrate, who has not taken the oaths of qualification as a justice of the peace, with a bailable offence, it is the duty of the magistrate to explain to the complainant the course which he should pursue for the purpose of obtaining redress, that is, by application to the justices of peace at Calcutta or to the grand jury. It is likewise the duty of the magistrate, after calling upon the person accused for his reply to the complaint, to report the case to government; at the same time stating, on a consideration of the distance at which the parties reside from the presidency, of the poverty of the complainant, or of other circumstances, whether it would in the opinion of the magistrate be proper, that the expense of the prosecution should be defrayed by government. The government, on receipt of such report, will pass such orders on the subject as appear advisable; and will at the same time direct, in cases which appear to require it, that the prosecution shall be conducted by the law officers of the government. *Reg. XV. 1806, sect. 5.*

Diet money may be advanced to the prosecutor and witnesses if they are indigent.

* *v. para. 474.*

4613. In all cases of inability of the prosecutor or witnesses to defray the charge of the journey to Calcutta, the magistrate is authorized to make them the same allowance as by sect. 26, *Reg. IX. 1793*,* he is authorized to make to prosecutors and witnesses in need of such assistance during their attendance on the sessions courts, viz., a daily allowance of two anas each during their attendance on the supreme court, including the actual period of their journey to and from Calcutta; or sufficient time for their return after their discharge from the court, in cases wherein it appears that they have voluntarily protracted their return beyond what was necessary. *Beng. and Ben. Reg. II. 1796, sect. 3. Ced. Prov. Reg. VI. 1803, sect. 19, cl. 4.*

These provisions do not refer to petty cases not warranting commitment.

4614. Complaints of petty criminal offences against British subjects, such as do not warrant commitment for trial before the supreme court, were not meant to be included in the above provisions, when the magistrate is not qualified to act as a justice of the peace. *Const. No. 20.*

In case of commitment the depositions are to be forwarded to the solicitor to government.

4615. In all cases where Europeans in the districts are charged with offences, for which they will be tried in the supreme court, the magistrate is, if time will admit of it, to forward the depositions to the solicitor to government in order that he may receive the advice and suggestions of that officer on the evidence which is to be adduced at the trial. *C. O. No. 34 of vol. 3.*

Forms.

4616. The forms of warrants, recognizances, &c. in use by her majesty's justices of the peace, given in appendix A, Nos. 60 to 68, were prepared by the solicitor to government. *C. O. Sup. Pol. L. P. No. 27 of 1844.* Other useful forms have been supplied.

4617. European British subjects brought before the magisterial authorities for any alleged offence, should not be interrogated upon the matters charged against them, but should merely be asked if they wish to make a statement in regard to the charge, and at the same time warned that whatever they may say will be made use of against them. After such question and warning, the statements made by the accused are to be taken down; and the following form of examination is to be made use of:—"The examination of A. B., of—, indigo-planter, taken by me, J. P. Esquire, magistrate of—and one of her majesty's justices of the peace, the—day of—185—: the said examinant being charged on the solemn affirmation of C. D. of—, with having (*here state the charge*) and being duly cautioned, saith———. Taken before me the day and year first above mentioned, J. P." (a) C. O. No. 199 of vol. 3.

Rules regarding the examination of European British subjects.

4618. A European defendant filing his pleadings and petitions in the vernacular language on the prescribed stamp, may be permitted to add translations thereof in English on unstamped paper; and all processes issued to him should be written in the ordinary language of the court and in English. It is not the duty of the court to furnish the defendant with translations; he must procure a person duly qualified to interpret for him. The deposition of a European witness must be recorded in English [or, *semble*, in the language in which it is delivered: *see para. 515*]. Const. No. 1035.

Such persons may file English translations of their vernacular pleadings.

Depositions of such persons should be taken in English.

4619. The following observations in regard to the duties of a justice of peace in this country were recorded by the advocate general in 1809:—"Whether persons holding the office of justice of peace are, or are not, authorized to exercise any specific power, or (which is the same thing) bound to discharge any specific duty, in this country, which belongs to

Observations of the advocate general regarding the general duties of a justice of the peace.

(a) The following rules, by which a justice of the peace should investigate a charge made before him, are extracted from Chitty's *Burn's Justice*, vol. 2, pages 464 *et seq.*—The first step in the investigation as to the offence is to call for and examine the witnesses for the accusers. The whole proceedings of the examination should be in the presence and hearing of the accused. The witness should be informed as to the purpose for which he is required to give evidence; or, in other words, that there is a person under charge against whom he is required to give evidence; otherwise the witness could not be punished for refusing to give evidence. Before administering the oath to the witness, the magistrate had better enquire who and what the witness is; and in some cases it would be as well shortly to ascertain what he intends to prove; it seems also that no witness ought to be examined who is not competent, according to the general rules of evidence, to give evidence. [For the rules regarding the incompetency of witnesses, *see paras. 544 et seq.*] After the competency of the witness is ascertained, he should be sworn; the following is the usual form of oath prescribed to be taken by a Christian: "*You shall true answer make to all such questions as shall be demanded of you; so help you God.*" The examination of the witness must be upon oath administered previous to the examination, or such examination will amount to nothing. If a magistrate committed a party without an oath made before him, he would be liable to an action if the prisoner were acquitted. Leading questions should not be proposed to a witness; nor irrelevant questions; nor questions which need not be answered. The witnesses should be examined before the accused, and he may cross-examine them. They should, especially if they appear unwilling, be examined separately; and no one who has already been completely examined should be permitted, if it be possible to avoid it, to inform any other who has yet to be examined to what particulars his evidence has extended: indeed, in most cases, it would be best and fairest to keep all the witnesses away but the one under examination. The answers to the examination, as they are given, should be immediately put into writing in a plain and intelligible manner, and as near as possible in the very words used by the witness. The examination, when put into writing, is usually read over, and tendered to the

Examination of accusers and witnesses.

the office of justice of the peace in England, must in every instance depend upon the question, whether that part of the English law, on which the given power or duty depends,

Examination of the
accused :

witness for signature ; and he should sign it ; though he is not actually obliged to do so, as such signature is not absolutely necessary, but is only taken for precaution and facility of future proof. If the slightest case even of suspicion be made out against the accused, he should be asked by the justice if he has anything to say against the charge : he should not be put on his oath. A prisoner, when taken on suspicion before a magistrate, is to be allowed to speak voluntarily, and to give his account freely ; and he ought not to be pressed to answer, examined, or questioned by the magistrate like a common witness : where a person had been so examined, his account

his signature ;

was rejected as inadmissible, though nothing like a threat or promise had been used. The examination of the prisoner, when reduced into writing, ought to be read over to him, and tendered to him for his signature : it ought to be subscribed also by the magistrate ; the signature however of the prisoner is not essentially necessary, but only for precaution and for the facility of future proof. It has been held that a written examination containing the prisoner's confession, taken by a committing magistrate, and read over to the prisoner, who admitted it to be true, but refused to sign it, would have been evidence at common law : in this case the examination was rendered

his witnesses ;

admissible by the prisoner acknowledging the truth of its contents ; but if the prisoner had not made such admission and had refused to sign it after it had been read over to him, it could not have been received in evidence. Whether he be silent or not, it is best that the justice should put down in writing the facts exactly as they take place before him ; and if he be silent, or declines saying anything in his behalf, the examination, after stating the offence with which the party is charged, as in the form [given in the text], should proceed thus : "*And the witnesses against the said A. B. being examined in his presence, the said A. B. is now asked by me if he wish to say anything in his own behalf ; whereupon the said A. B. answereth nothing, or saith*"—stating what the accused may say as nearly as possible in the very words he uses. The accused may, if he choose, call witnesses, and they may be examined on oath, like the witnesses against him ; and their examination should be put into writing, like the rest.

if several offenders
Deposition how to
be taken

If more than one person be accused, each of them should be examined apart from the rest, in order that an opportunity may be afforded of detecting any variations in their story. The depositions should be taken down in writing in the very words used by the witness, or as nearly as possible in those words, and not in any law technicalities, or words not made use of by him. In almost all cases it would be infinitely better if the depositions were taken in the first person, and if, after the introductory part, which generally concludes with the words "*who saith as follows,*" the deposition proceeded to state "*I saw, &c. at such a time and place,*" instead of saying "*he, this examinant*" or "*he, this deponent*"—terms which many witnesses do not understand, and perhaps may conceive to mean some other person. Only so much as is material need be taken down. If the original information and evidence taken before the warrant was issued contain an complete case, it is the practice after re-swearing the accuser and witnesses, to read over their former depositions in their presence and that of the prisoner, and then to state to the latter that he is at liberty to ask the prosecutor and witnesses any questions respecting the charge against him ; and, if he declines so doing, the examinations are not again gone over, but a fresh jurat is made to them ; and this even before a fresh magistrate. The papers are then to be signed by the parties deposing, and also by the justice before whom they are taken ; but these formalities are not absolutely requisite.

Recognizance to
prosecute or give evi-
dence.

When the justice has decided upon bailing or committing the accused, he should take the recognizance of the prosecutor to prosecute, as also the recognizance of the material witnesses to appear against the party accused. If more than one are to be bound to prosecute, the recognizances should not be taken separately. Where goods have been obtained by false pretences, the recognizance to prosecute should be in double the value of the goods. Infants and married women, who cannot legally bind themselves, must procure others to be bound for them ; infancy however is no ground for discharging a forfeited recognizance to appear and prosecute for a felony.

Refusing to give
evidence.

If the prosecutor or witness refuse to give such recognizance the magistrate has power to commit him ; but a justice of the peace is not authorized by law to commit a witness willing to enter into a recognizance for his appearance to give evidence against an offender, merely because such witness is unable to find a surety to join him in such recognizance ; nor ought the justice to require such surety ; the party's own recognizance (at the peril of commitment) is all that ought to be required.

is or is not applicable in this country. There are some broad lines which might be laid down for determining this question in certain cases; but in many cases it is and must be matter of nice judicial discretion. As I see no practical use, but on the contrary a great deal of inconvenience, in attempting to describe generally what matters are and what are not cognizable by justices of the peace here, I beg to decline it. The cases of the most common occurrence are attended with no difficulty; and the course which the magistrates have to take in them is, or easily may be, well known. If any should occur, which are out of the ordinary routine, the easiest and safest way for the magistrate is to apply to the government for instructions, which may be always obtained without any great delay. And if the case should be such as not to admit of that delay (though I can hardly imagine such a case) the magistrate may, I am sure, confidently act for the best, refusing or granting his interference as he thinks most expedient for the purposes of justice and public convenience. If his intentions are upright, the law will hold him harmless of any personal consequences; and, speaking from my own experience, I have no doubt that the government would always think itself bound to defend him if attacked where his motives were unquestionable." (a) C. O. No. 59 of vol. 1.

4620. When it appears necessary to a magistrate, in his capacity of justice of the peace, to take penal recognizances, he should consult the advocate general if in doubt as to the legality of the proceeding. And if he desires to enforce the forfeiture of such recognizances, he must transmit them to the clerk of the crown before the next ensuing sessions of the supreme court, as the only proceeding for the forfeiture is in that court. The recognizance should always distinctly specify the time for which it is to continue in force: but the amount of the penalty of such recognizances is not limited by the amount of penalty which a magistrate is authorized to levy from a European British subject under statute 53, George III. cap. 155, sect. 105. Govt. order, June 9, 1830. Const. Nos. 446 and 826.

Rules regarding the requisition and forfeiture of recognizances to keep the peace.

4621. Whereas his majesty's British subjects resident in the British territories in India, without the town of Calcutta, are now by law subject only to the jurisdiction of his majesty's court at Calcutta, and are exempted from the jurisdiction of the courts established by the Company within the said territories, to which all other persons whether natives or others, inhabitants in the said territories without the limits of Calcutta, are amenable: and whereas it is expedient to provide more effectual redress for the native inhabitants of the said territories, as well in the case of assault, forcible entry, or other injury accompanied with force, which is committed by British subjects at a distance from the place where his majesty's court is established, as in case of civil controversies with such British subjects;—it is therefore enacted, that it is lawful for any native of India, resident in the East Indies, or parts aforesaid, and without the town of Calcutta, in case of any

Powers of magistrate.

Magistrate has jurisdiction in cases of assault, forcible entry, or other injury accompanied with force committed by European British subjects on natives of India.

(a) The remainder of the opinion of the advocate general given in the above circular order refers to cases of forcible entry, which have since then been made cognizable by magistrates by the 53rd George III; and it is therefore useless now to quote it. It has been ruled that no English statute of a later period than 13th George I. is applicable to India, unless its extension is expressly declared therein. See sect. 19, chap. 3, book 1, of the functions of a justice of the peace, page 178.

assault, forcible entry, or other injury accompanied with force, alleged to have been done against his person or property by a British subject, to complain of such assault, forcible entry, or other injury accompanied with force, not being felony, to the magistrate of the zillah or district where the alleged offender is resident, or in which such offence has been committed; and such magistrate has power and authority, at the instance of the person so complaining, to take cognizance of such complaint, to hear parties, to examine witnesses, and having taken in writing the substance of the complaint, defence, and evidence, to acquit or convict the person accused; and, in case of conviction, to inflict upon such person a suitable punishment by fine, not exceeding 500 rupees, to be levied in case of non-payment by warrant under the hand of the said magistrate, and upon any property of the party so convicted which may be found within the said district; and if no such property is found within the said district, then it is lawful for the said magistrate, by warrant also under his hand, to commit such offender to some place of confinement within the said zillah or district, which, in the judgment of the said magistrate, is fit for receiving such offender; or, if there is no fit place of confinement, then to the jail of the presidency, to remain there for a period not exceeding two months, unless such fine is sooner paid; and it is lawful for the said magistrate to award the whole or any portion of such fine to the party aggrieved, by way of satisfaction for such injury. Provided always, that all such convictions are removable by writ of *certiorari* into the said court of oyer and terminer and jail delivery, in the same manner, and upon the same terms and conditions, and are to be proceeded upon in the same manner in every respect as is directed in the Act of the thirty-third year of his majesty's reign, with regard to other convictions before justices of peace* in the British settlements or territories in India: provided also, that nothing herein contained is to extend, or to be construed to extend, to prevent such magistrate from committing or holding to bail any British subject, charged with any such offence before him, in the same manner as such British subject might have been committed or holden to bail if this Act had not been passed, where the offence charged appears to such magistrate to be of so aggravated a nature as to be a fit subject for prosecution in any of his majesty's courts to which such British subjects are amenable. 53 Geo. III. cap. 155, sect. 105, as amended by Act XXII. 1854.

Magistrate how to proceed in such case; and what sentence he may pass.

The fine may be awarded to the aggrieved party.

Such convictions are removable by writ of *certiorari* into the supreme court.

* v. paras. 4668 and 4669.

But this provision is not meant to prevent the magistrate from committing the accused to the supreme court, if the offence charged is of an aggravated nature.

The foregoing provisions extended to such offences against the person or property of any person whatever.

4622. The foregoing provisions, so far as they extend to cases of assault, forcible entries, or other injuries accompanied by force, not being felonies, against the person or property of any native of India, are hereby extended to the case of any assault, forcible entry, or other injury accompanied with force, not being felony, which may at any time hereafter be committed in any part of the territories under the British government, not being within the towns of Calcutta, or Madras, or the Islands of Bombay and Colaba, or the settlement of Prince of Wales' Island, Singapore, and Malacca, by any British subject or other person, against the person or property or any person whatever. Act VII. 1853, sect. 1.

These powers may be exercised by any officer with the powers of a magistrate.

4623. The powers in such cases given to the magistrate may be lawfully exercised by any joint magistrate or other person lawfully exercising the powers of a magistrate,

in the case of any such offence as aforesaid, which may hereafter be committed within the district over which his authority extends. Act VII. 1853, sect. 2.

4624. In the case of an assault by one British subject upon another British subject, a mofussil magistrate [has jurisdiction under Act VII. 1853, and also] may take penal recognizance, and proceed under the provisions of Act V. 1848. As a justice of the peace, acting in that office only, he has no judicial power in such case, and can only commit the party, if he think fit so to do, for trial to the supreme court. C. O. Nos. 44 and 66 of vol. 4.

Power of magistrate in case of assault by one European British subject upon another.

4625. It is further enacted that in all cases of debt not exceeding the sum of 50 rupees, alleged to be due from any British subject to any native of India resident in the East Indies or parts aforesaid, and without the jurisdiction of the court of requests established at Calcutta, it is lawful for the magistrate of the zillah or district where such British subject is resident, or in which such debt has been contracted, to take cognizance of all such debts, and to examine witnesses upon oath, and in a summary way to decide between the parties, which decision is to be final and conclusive to all intents and purposes; and in all cases where any such debt is found to be due from any British subject to any such native of India, the amount thereof is to be levied in the same manner, and subject to the same regulations and provisions in respect to the commitment of the debtor, as are hereinbefore made and provided in respect to the levying of fines in case of the conviction of a British subject before such magistrate. (a) 53 Geo. III, cap. 155, sect. 106.

Magistrate has jurisdiction in cases of debt, not exceeding 50 rupees, alleged to be due to natives from European British subjects.

Amount awarded how to be levied.

4626. A magistrate, or other officer exercising the full powers of a magistrate, who has not taken the oaths of qualification as a justice of the peace, may take cognizance of complaints against European British subjects to the extent specified in the provisions of sects. 105 and 106 of the 53rd George III, cap. 155. C. O. No. 57 of vol. 2. N. A. R. vol. 4, page 41. Const. No. 900.

Magistrate has jurisdiction in such cases, though he is not a justice of peace.

4627. But an assistant to a magistrate, not vested with full powers, is not competent to take cognizance of such cases. Const. No. 595.

But officers not exercising the full powers of a magistrate are not competent.

4628. As regards the amenability of British officers and soldiers to magistrates, under the 53rd George III, chapter 155, with reference to the provisions of the 4th George IV, chapter 81, and Reg. XX. 1825, the following opinion was given by the advocate general. "The statute 4th George IV, chapter 81, although it repealed the next or 106th section of the statute 53 George III, chapter 155, leaves the 105th section unrepealed; and Reg. XX. 1825, which was enacted by a subordinate legislative, and in my opinion solely with a view

Opinion of Advocate General regarding amenability of British officers and soldiers to mofussil magistrates in petty cases of assault, &c.

(a) This provision is repealed as to debts due from officers and soldiers being European British subjects by 4 Geo. IV. cap. 81, sect. 57. And, as it was enacted to provide more effectual redress in such civil controversies at a time when European British subjects were not amenable to the provincial civil courts, it might now be presumed that it is rendered invalid with regard to all such persons by Act XI. 1836, which declares that no one is to be excepted from the jurisdiction of such local courts by reason of place of birth or descent: but the nizamut adawlut has ruled that it must be considered in full force until expressly repealed. That court has also ruled that wages must be held to be a debt within the meaning of the term as used above.

of carrying out the provision of statute 4th George IV, chapter 81, cannot in any way effect the operation of the statute 53 George III, chapter 155. The statute 4 George IV, chapter 81, has been amended and re-enacted by successive enactments, 3 and 4 Vict. chapter 37, and 12 and 13 Vict. chapter 43.* Under the latter Acts, the same powers as were formerly conferred upon courts martial, distant more than 120 miles from the presidency, have been continued; but they both contain an express provision that nothing in those Acts contained shall be construed to exempt any officer or soldier from being proceeded against by the ordinary course of law, a provision which leaves the jurisdiction of the magistrates under statute 53 George III, chapter 155, and Act V. 1848, and of the supreme courts, wholly untouched. With respect to offences committed by British officers and soldiers, and not falling within the terms of statute 53 George III, or Act V. 1848, I am of opinion that they are only cognizable by the supreme court or courts martial, both of which courts appear to me to have concurrent jurisdiction over British officers resident beyond 120 miles from the presidency. C. O. No. 91 of vol. 4.

* and since then
by 20 and 21 Vict.
cap. 66.

If several charges are preferred separately against an European British subject, the sentences on conviction may be likewise separate.

4629. Where an indigo planter, an European British subject, was accused of using violence to four individuals, and the magistrate applied to the nizamat adawlut for information as to his competency to award a separate punishment for each offence, it was held that, if the offences were charged separately, there was no reason why the sentences on conviction should not be likewise separate. The court observed at the same time, that in such cases confinement is authorized only in default of payment of fine; and that if, on investigation, the magistrate should be of opinion that the offender ought to be brought to trial before the supreme court, he should proceed in the usual manner, reporting the case for the information and orders of government. Const. No. 632.

Such persons may appear by attorney.

4630. There appears no reason why Europeans, charged with offences under the above provisions, should not be allowed the privilege of appearing by attorney, which is enjoyed by natives. (a) Const. No. 570.

Fine how to be levied.

4631. Under these provisions, the power to imprison is only given in default of "*property within the district*" in which the fine could be levied; so that, unless it be at the time of conviction proved before the magistrate, or confessed by the party fined, that he has no property within the district, an attempt to levy by warrant must be made before the magistrate can commit the offender. After conviction and demand of the fine the magistrate may, in default of payment, immediately issue his warrant to levy the fine; and default would be incurred, if the offender, after demand made of payment, were to quit the court without making payment. But the magistrate has no authority, after conviction passed, to detain the defendant, or

(a) While recording the above opinion, the court observed "that they were not the authority to construe Acts of parliament." Now, by sect. 1, Act XXII. 1839, persons tried for any offences in any of her majesty's courts of justice are admitted, after the close of the case for the prosecution, to make full answer and defence thereto by counsel learned in the law, or by attorney in courts where attorneys may practice as counsel: and by sect. 2, in cases of summary conviction by a magistrate or justice of peace, exercising jurisdiction within the limits of any of her majesty's supreme courts, persons accused are admitted to make their full answer and defence and to have all witnesses examined and cross-examined by counsel or attorney. See also para. 1094.

require bail for his appearance, till *it be ascertained* whether there be property within the district on which the fine can be levied. He can only take bail under sect. 105 in such cases as are therein specified. If, however, it be at the time of conviction proved before the magistrate, or confessed by the offender, that he has no property within the district, the magistrate (after recording the proof or confession last mentioned) may at once commit for the fine. The offender is not bound upon conviction to disclose his property, or to declare whether he has property or not. If he be known to have property, or if it be doubtful whether he have any within the district, the magistrate should issue his warrant to levy, and deliver it to his officers for execution in the usual manner. The offender may rebut the proof tendered of his having no property, and give evidence of his having property, to prevent immediate commitment as above, and the magistrate is bound to receive such evidence if tendered; and he should call upon the offender to say whether he has any thing to offer in contradiction of the evidence of no property. If a warrant to levy the fine be issued, it is indispensable that notice of the seizure and intended sale be given by public advertisement; and, if practicable, by service on the offender himself; and the shortest notice that should be given is such as is requisite in cases of distress for rent* or the like. As to the meaning of the term property, it seems that the warrant of the magistrate to levy may, in default of sufficient *personal* property, be executed on the *real* property if any of the offender. But it should be in all cases executed in the first instance on the personalty, because, as the statute makes no provision for the transfer of realty to the purchaser, difficulties might arise as to his title, especially if he sue for possession in her majesty's court. Only the right, title, and interest (or property) of the offender can be sold. The magistrate, or his officer, may deliver over personal property seized and sold under the warrant to the purchaser; but has no authority to dispossess the party in possession of realty, or to deliver possession of it to the purchaser. He must leave him to recover possession by process of law. It may be that the offender has not the right of possession, but only the right of property. The magistrate should deliver to the purchaser the certificate or other document usually delivered in the *mofussil* to purchasers under judicial execution, and there ends his duty. If the executing officer has sold (as he ought) merely the right, title, and interest of the offender, the purchaser has no remedy against the magistrate, should that right, &c., prove to be moonshine. The risk of what property may be in the offender, lies with the purchaser. Of course no assurance of title or interest should be held out to the purchaser at the time of sale; and in such case the magistrate can have no right to retain the purchase money until the title be ascertained. Opinion of Advocate General in C. O. No. 79 of vol. 4.

* i. e. five days.

4632. Where a European British subject had been guilty of the offence described in sect. 7, Act IV. 1840, by retaining possession of a house awarded to another party, and refusing to admit the constable who first served him with a summons, and then held a warrant for his apprehension,—the advocate general was of opinion that in all cases of warrants for the arrest of a party *convicted* by a magistrate or justice of the peace of any offence under the Act in question (or indeed under any Act giving similar power) the warrant may be executed (if necessary) by the breaking of a door or of the house in which the offender

Procedure if a European British subject refuses to yield possession of property decreed to another.

may be, *after demand of admittance* accompanied by *production of the warrant* and refusal to admit or open. The remedy is two fold, for the officer may not only break the door in execution as aforesaid of the warrant for the arrest of the convicted offender ; but, if he hold also the magistrate's order to put the ousted party again into possession, he may, after demand and refusal of admittance, with production of his order as above, break open the door in execution of that order ; and, once within the house, may arrest the offender under the other warrant. Opinion of Advocate General, May 31, 1853.—From this it would appear that the case must be tried *ex parte*, if the defendant fails to appear on summons, and that the warrant must issue after conviction ; and that in such case it is necessary to prove the due service of the summons and the failure to appear on the date specified therein, by the deposition of the officer employed to serve it.

Powers of justice.

Who may be admitted to bail on a charge of felony, and who may not : and rule for taking evidence on behalf of the person charged.

4633. Where any person is taken on a charge of felony or suspicion of felony before a justice of the peace, at any place beyond the local limits of the jurisdiction of any of her majesty's courts of justice erected or to be erected within the British territories, and the charge is supported by positive and credible evidence of the fact, or by such evidence as if not explained or contradicted raises in the opinion of the justice a strong presumption of the guilt of the person charged, such person is to be committed to prison by such justice in the manner hereinafter mentioned ; but if the evidence given in support of the charge is not in the opinion of the justice such as to raise a strong presumption of the guilt of the person charged and to require his or her committal, or such evidence is adduced on behalf of the person charged as in his opinion weakens the presumption of his or her guilt, but there notwithstanding appears to him, in either of such cases, to be sufficient ground for judicial inquiry into his or her guilt, the person charged is to be admitted to bail by such justice in the manner hereinafter mentioned : provided always that nothing herein contained is to be construed to require any such justice to hear evidence on behalf of any person so charged as aforesaid, unless it appears to him to be meet and conducive to the ends of justice to hear the same. 9 George IV. cap. 74, sect. 2.

Before any person charged with felony is bailed or committed, the justice is to take down in writing the examination, &c. and to bind witnesses to appear at the trial.

Examinations, &c. to be delivered to the supreme court.

4634. The justice of peace, before he admits to bail or commits to prison any person arrested for felony or on suspicion of felony, is to take the examination of such person, and the information upon oath of those who know the facts and circumstances of the case, and is to put the same or as much thereof as is material into writing, and the justice is to certify such bailment in writing ; and every such justice has authority to bind by recognizance all such persons, as know or declare any thing material touching any such felony or suspicion of felony, to appear at the next court of oyer and terminer or jail delivery, or superior criminal court or sessions of the peace, at which the trial thereof is intended to be, then and there to prosecute or give evidence against the party accused ; and such justice is to subscribe all such examinations, informations, bailments, and recognizances, and to deliver or cause the same to be delivered to the proper officer of the court in which the trial is to be, before or at the opening of the court. 9 George IV. cap. 74. sect. 3.

4635. Every justice of the peace, before whom any person is taken on a charge of misdemeanor or suspicion thereof, is to take the examination of the person charged and the

information upon oath of those who know the facts and circumstances of the case, and is to put the same, or as much thereof as is material, into writing, before he commits to prison or requires bail from the person so charged; and in every case of bailment is to certify the bailment in writing, and has authority to bind all persons by recognizance to appear to prosecute or give evidence against the party accused, in like manner as in cases of felony; and is to subscribe all examinations, informations, bailments, and recognizances, and to deliver or cause the same to be delivered to the proper officer of the court in which the trial is to be, before or at the opening of the court, in like manner as in cases of felony.

9 George IV. cap. 74, sect. 4.

4636. If any justice offends in any thing contrary to the true intent and meaning of these provisions, the court to whose officer any such examination, information, evidence, bailment, recognizance, or inquisition, ought to have been delivered, is upon examination and proof of the offence in a summary manner to set such fine upon every such justice as the court thinks meet. 9 George IV. cap. 74, sect. 6.

Penalty on justice offending in any thing contrary to the intent and meaning of the above provisions.

4637. For the more effectual prosecution of accessaries before the fact to felony, it is enacted, that if any person counsels, procures, or commands any other person to commit any felony, whether the same be a felony at common law or by virtue of any statute or statutes made or to be made, the person so counselling, procuring, or commanding is to be deemed guilty of felony; and may be indicted and convicted either as an accessary before the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon; or may be indicted and convicted of a substantive felony, whether the principal felon has or has not been previously convicted, or is or is not amenable to justice; and may be punished in the same manner as any accessary before the fact to the same felony if convicted as an accessary may be punished; and the offence of the person so counselling, procuring, or commanding, howsoever indicted, may be inquired of, tried, determined, and punished by any court which has jurisdiction to try the principal felon, in the same manner as if such offence had been committed at the same place as the principal felony, although such offence may have been committed either on the high seas, or at any place on land, whether within her majesty's dominions or without: and in case the principal felony, and the offence of counselling, procuring, or commanding, have been committed in different places, the last-mentioned offence may be inquired of, tried, determined, and punished in any of her majesty's courts of justice within the British territories in India, having jurisdiction to try either of the said offences; provided always, that no person who has once been duly tried for any such offence, whether as an accessary before the fact or as for a substantive felony, is to be liable to be again indicted or tried for the same offence. 9 George IV. cap. 74, sect. 7.

Accessary before the fact may be tried as such, or as a substantive felon, by any court which has jurisdiction to try the principal felon, although the offence be committed on the seas or abroad.

If the offence be committed in different places, the accessary may be tried in any of the Queen's courts in India having jurisdiction.

4638. If any person becomes an accessary after the fact to any felony, whether the same be a felony at common law, or by virtue of any statute or statutes made or to be made, the offence of such person may be inquired of, tried, determined, and punished by any court which has jurisdiction to try the principal felon, in the same manner as if the

Accessary after the fact may be tried by any court which has jurisdiction to try the principal felon.

If the offence be committed in different places, the accessory may be tried in any court having jurisdiction.

act, by reason whereof such person has become an accessory, were committed at the same place as the principal felony, although such act has been committed either on the high seas or at any place on land, whether within her majesty's dominions or without; and in case the principal felony, and the act by reason whereof any person has become accessory, have been committed in different places, the offence of such accessory may be inquired of, tried, determined, and punished in any of her majesty's courts of justice within the British territories in India, having jurisdiction to try either of the said offences; provided always that no person who has once been duly tried for any offence of being an accessory is to be liable to be again indicted or tried for the same offence. 9 George IV. cap. 74, sect. 8.

Accessory may be prosecuted after conviction of the principal, though the principal be not attainted.

4639. If any principal offender is in any wise convicted of any felony, it is lawful to proceed against any accessory, either before or after the fact, in the same manner as if such principal felon had been attainted thereof, notwithstanding such principal felon should die or be pardoned, or otherwise delivered before attainder; and every such accessory is to suffer the same punishment, if he or she be in any wise convicted, as he should have suffered if the principal had been attainted. 9 George IV. cap. 74, sect. 9.

In indictment for offences committed on the property of partners, it may be laid in any one partner by name, and others.

4640. In any indictment or information for any felony or misdemeanor wherein it is requisite to state the ownership of any property whatsoever, whether real or personal, which belongs to or is in the possession of more than one person, whether such persons be partners in trade, joint tenants, parceners, or tenants in common, it is sufficient to name one of such persons, and to state such property to belong to the person so named, and another or others as the case may be; and whenever in any indictment or information for any felony or misdemeanor it is necessary to mention, for any purpose whatsoever, any partners, joint tenants, parceners, or tenants in common, it is sufficient to describe them in the manner aforesaid: and this provision is to be construed to extend to all joint-stock companies and trustees. 9 George IV. cap. 74, sect. 10.

Aiders and abettors in offences punishable by justice on summary conviction.

4641. If any person aids, abets, counsels, or procures the commission of any offence which is by this Act punishable on summary conviction, either for every time of its commission, or for the first, and second time only, or for the first time only, every such person is, on conviction before a justice of the peace, to be liable for every first, second, or subsequent offence of aiding, abetting, counselling, or procuring, to the same forfeiture and punishment, to which a person guilty of a first, second, or subsequent offence as a principal offender is by this Act made liable. 9 George IV. cap. 74, sect. 39.

A person may be apprehended in the act of committing an offence.

A justice upon good grounds of suspicion may grant a search warrant.

4642. Any person found committing any offence punishable either upon indictment or upon summary conviction by virtue of this Act, may be immediately apprehended without a warrant by any peace-officer, or by the party aggrieved, or by his servant, or any person authorized by him, and forthwith taken before some neighbouring justice of the peace to be dealt with according to law: and if any credible witness proves upon oath before a justice of the peace a reasonable cause to suspect that any person has in his possession or on his premises any property whatsoever, on or with respect to which any

such offence has been committed, the justice may grant a warrant to search for such property, as in the case of stolen goods: and any person to whom any property is offered to be sold, pawned, or delivered, if he has reasonable cause to suspect that any such offence has been committed on or with respect to such property, is hereby authorized, and if in his power is required, to apprehend and forthwith to carry before a justice of the peace the party offering the same, together with such property, to be dealt with according to law. 9 George IV. cap. 74, sect. 40.

A person to whom property suspected to be stolen, &c. is offered, may seize the party offering.

4643. The prosecution for every offence punishable on summary conviction under this Act is to be commenced within three calendar months after the commission of the offence, and not otherwise; and the evidence of the party aggrieved is to be admitted in proof of the offence. 9 George IV. cap. 74, sect. 41.

Summary proceedings must be commenced within three months.

4644. Where any person is charged on the oath of a credible witness, before any justice of the peace, with any such offence, the justice may summon the person charged to appear at a time and place to be named in such summons, and if he does not appear accordingly, then (upon proof of the due service of the summons upon such person, by delivering the same to him personally, or by leaving the same at his usual place of abode) the justice may either proceed to hear and determine the case *ex parte*, or issue his warrant for apprehending such person, and bringing him before himself or some other justice of the peace: or the justice before whom the charge is made may (if he so think fit) without any previous summons (unless where otherwise specially directed) issue such warrant; and the justice before whom the person charged appears or is brought is to proceed to hear and determine the case. 9 George IV. cap. 74, sect. 42.

Mode of compelling the appearance of persons punishable on summary conviction.

4645. Every sum of money which is forfeited for the value of any property stolen or taken, or for the amount of any injury done, (such value or amount to be assessed in such case by the convicting justice) is to be paid to the party aggrieved, if known, except where such party has been examined in proof of the offence; or when the party aggrieved is unknown, such sum is to be applied in the same manner as the penalty: provided always, that where several persons join in the commission of the same offence, and are, upon conviction thereof, each adjudged to forfeit a sum equivalent to the value of the property or to the amount of the injury, in every such case no further sum is to be paid to the party aggrieved than that which is forfeited by one of such offenders only, and the corresponding sum or sums forfeited by the other offender or offenders are to be applied in the same manner as any penalty imposed by a justice of the peace is herein directed to be applied. 9 George IV. cap. 74, sect. 43.

Application of forfeitures and penalties on summary convictions.

Proviso if more than one is adjudged to forfeit the value of the injury.

4646. In every case of a summary conviction under this Act, where the sum which is forfeited for the value of the property stolen or taken, or for the amount of the injury done, or which is imposed as a penalty by the justice, is not paid either immediately after the conviction or within such period as the justice at the time of the conviction appoints, it is lawful for the convicting justice (unless where otherwise specially directed) to commit the offender to the common jail or house of correction, there to be imprisoned

If a person summarily convicted, does not pay, &c. the justice may commit him.

Scale of imprisonment.

only, or to be imprisoned and kept to hard labour, according to the discretion of the justice, for any term not exceeding two calendar months, where the amount of the sum forfeited or of the penalty imposed, or of both (as the case may be), together with the costs, does not exceed fifty sicca rupees; and for any term not exceeding four calendar months, where the amount with costs does not exceed one hundred sicca rupees; and for any term not exceeding six calendar months in any other case; the commitment to be determinable in each of the cases aforesaid upon payment of the amount, with costs. 9 George IV. cap. 74, sect. 44.

The justice may discharge the party from his conviction in certain cases.

4647. Provided always that where any person is summarily convicted before a justice of the peace of any offence against this Act, and it is a first conviction, it is lawful for the justice, if he so think fit, to discharge the offender from his conviction, upon his making such satisfaction to the party aggrieved, for damages and costs, or either of them, as is ascertained by the justice. 9 George IV. cap. 74, sect. 45.

A summary conviction is a bar to any other proceeding for the same cause.

4648. In case any person convicted of any offence punishable upon summary conviction by virtue of this Act has paid the sum adjudged to be paid, together with costs under such conviction, or has suffered the imprisonment awarded for non-payment thereof, or the imprisonment adjudged in the first instance, or has been discharged from his conviction in the manner aforesaid, in every such case he is to be released from all further or other proceedings for the same cause. 9 George IV. cap. 74, sect. 46.

Form of conviction.

4649. The justice before whom any person is convicted of any offence against this Act may cause the conviction to be drawn up in the following form of words, or in any other form of words to the same effect, as the case may require; *videlicet*,

“ Be it remembered, that on the _____ day of _____ in the year of
 “ our Lord _____ at _____ [as the case may be] A. O. is convicted
 “ before me I. P., magistrate of _____, and one of her majesty’s justices of the peace, for
 “ that he the said A. O. did [specify the offence, and the time and place when and where the
 “ same was committed, as the case may be, and on a second conviction state the first conviction,]
 “ and I the said I. P. adjudge the said A. O. for the said offence to be imprisoned in the
 “ [or to be imprisoned in the _____ and there kept to hard
 “ labour] for the space of _____; or, I adjudge the said A. O. for his said offence
 “ to forfeit and pay _____ [here state the penalty actually imposed, or
 “ state the penalty, and also the value of the articles stolen, or the amount of the injury, and
 “ as the case may be], and also to pay the sum of _____ for costs; and in
 “ default of immediate payment of the said sums to be imprisoned in the
 “ [or to be imprisoned in the _____ and there
 “ kept to hard labour] for the space of _____ unless the said sums shall
 “ be sooner paid; [or, and I order that the said sums shall be paid by the said A. O.
 “ on or before the _____ day of _____;] and I direct that the said
 “ sum of _____ [i. e. the penalty only] shall be paid to
 “ _____ of _____ aforesaid, in which the said offence was committed,
 “ to be by him applied according to the directions of the statute in that case made and

“ provided ; [or that the said sum of *i. e. the penalty*, shall be paid to,
 “ &c. as before,] and that the said sum of *[i. e. the value of the articles*
 “ *stolen, or the amount of the injury done]* shall be paid to *C. D. [the party aggrieved,*
 “ *unless he has been examined in proof of the offence, in which case state that fact, and dis-*
 “ *pose of the whole like the penalty, as before]*. Given under my hand and seal, the day and
 “ year first above-mentioned.”
 9 George IV. cap. 74, sect. 47.

4650. Every justice of the peace before whom any person is convicted of any offence against this Act is to transmit the conviction to the next court of general or quarter sessions, there to be kept by the proper officer among the records of the court ; and upon any indictment or information against any person for a subsequent offence, a copy of such conviction, certified by the proper officer of the court, or proved to be a true copy, is to be sufficient evidence to prove conviction for the former offence, and the conviction is to be presumed to have been unappealed against until the contrary be shown. 9 George IV. cap. 74, sect. 50.

Convictions to be returned to the sessions.

How far they are to be evidence in future cases.

4651. If any person has in his custody, without lawful excuse, the proof whereof should lie on the party accused, any greater number of pieces than five pieces of any false or counterfeit gold or silver coin of any of the territories under the British government in India or usually current and received as money in payment in any part of the British territories in India, every such person, being thereof convicted upon the oath of one or more credible witness or witnesses before one of her majesty's justices of the peace, is to forfeit and lose all such false and counterfeit coin ; which are to be cut in pieces and destroyed by order of such justice : and is for every offence to forfeit and pay any sum of money not exceeding in value forty sicca rupees, or less than twenty sicca rupees, in the currency of the place in which such offence is committed, for every such piece of false or counterfeit coin which is found in the custody of such person, one moiety to the informer or informers, and the other moiety to the poor of the presidency, settlement, or place in which such offence is committed ; and, in case any such penalty is not forthwith paid, it is lawful for such justice to commit the person or persons who are adjudged to pay the same to the common jail or house of correction, there to be kept to hard labour for the space of three calendar months, or until such penalty shall be paid. 9 George IV. cap. 74, sect. 75.

Having in possession more than five pieces of counterfeit coin, without lawful excuse, punishable with fine or three months' imprisonment.

4652. If any goods, merchandize, or articles of any kind, belonging to any ship or vessel in distress, or wrecked, stranded, or cast on shore, are by virtue of a search warrant, to be granted as hereinafter mentioned, found in the possession of any person, or on the premises of any person with his knowledge, and such person, being carried before a justice of the peace, does not satisfy the justice that he came lawfully by the same, then the same is by order of the justice to be forthwith delivered over to or for the use of the rightful owner thereof ; and the offender, on the conviction of such offence before the justice, is to forfeit and pay, over and above the value of the goods, merchandize, or articles, such sum of money, not exceeding two hundred sicca rupees, as to the justice seems meet. 9 George IV. cap. 74, sect. 91.

Persons in possession of shipwrecked goods not giving a satisfactory account, punishable by fine.

Shipwrecked
goods offered for
sale may be seized.

4653. If any person offers or exposes for sale any goods, merchandize, or articles whatsoever, which have been unlawfully taken, or reasonably suspected so to have been taken, from any ship or vessel in distress, or wrecked, stranded, or cast on shore, in every such case any person to whom the same is offered for sale, or any officer of the customs or excise, or peace officer, may lawfully seize the same, and is with all convenient speed to carry the same, or to give notice of such seizure, to some justice of the peace; and if the person who has offered or exposed the same for sale, being duly summoned by such justice, does not appear and satisfy the justice that he came lawfully by such goods, merchandize, or articles, then the same are by order of the justice to be forthwith delivered over to or for the use of the rightful owner thereof, upon payment of a reasonable reward (to be ascertained by the justice) to the person who seized the same; and the offender, on conviction of such offence by the justice is to forfeit and pay, over and above the value of the goods merchandize, or articles, such sum of money, not exceeding two hundred sicca rupees, as to the justice seems meet. 9 George IV. cap. 74, sect. 92.

Stealing dogs, or
beasts, or birds,
kept in confine-
ment.

4654. If any person steals any dog, or steals any beast or bird ordinarily kept in a state of confinement, not being the subject of larceny at common law, every such offender, being convicted thereof before a justice of the peace, is for the first offence to forfeit and pay, over and above the value of the dog, beast, or bird, such sum of money, not exceeding two hundred sicca rupees, as to the justice seems meet; and if any person so convicted is afterwards guilty of any of the said offences, and is convicted thereof in like manner, every such offender is to be committed to the common jail or house of correction, there to be kept to hard labour for such term, not exceeding twelve calendar months, as the convicting justice thinks fit; and on such subsequent conviction the justice may further order the offender, if a male, to be once or twice publicly or privately whipped, after the expiration of four days from the time of such conviction. 9 George IV. cap. 74, sect. 97.

Receivers of pro-
perty where the
original offence is
punishable summa-
rily, are punishable
as original offend-
ers.

4655. Where the stealing or taking of any property whatsoever is by this Act punishable on summary conviction, either for every offence, or for the first and second offence only, or for the first offence only, any person who receives any such property, knowing the same to be unlawfully come by, is on conviction thereof before a justice of the peace to be liable, for every first, second, or subsequent offence of receiving, to the same forfeiture and punishment to which a person guilty of a first, second, or subsequent offence of stealing or taking such property is by this Act made liable. 9 George IV. cap. 74, sect. 113.

Breaking down
the dam of a fish-
ery. &c.

4656. If any person unlawfully and maliciously breaks down or otherwise destroys the dam of any fish-pond, or of any water which is private property, or in which there is any private right of fishery, with intent thereby to take or destroy any of the fish in such pond or water, or so as thereby to cause the loss or destruction of any of the fish; or unlawfully and maliciously puts any lime or other noxious material in any such pond or water, with intent thereby to destroy any of the fish therein; every such offender, being convicted thereof before a justice of the peace, is to forfeit and pay, over and above the amount of

the injury done, such sum of money, not exceeding fifty sicca rupees, as to the justice seems meet. 9 George IV. cap. 74, sect. 121.

4657. Every punishment and forfeiture by this Act imposed on any person maliciously committing any offence, whether the same be punishable upon indictment or upon summary conviction, is equally to apply and to be enforced, whether the offence is committed from malice conceived against the owner of the property in respect of which it is committed, or otherwise. 9 George IV. cap. 74, sect. 124.

Malice against the owner of the property not essential to the offence.

4658. If any person steals the whole or any part of any growing tree, sapling or shrub, or any underwood, or of any pale, post, or stile, or any growing cultivated plant, root, fruit, or vegetable production, or unlawfully and maliciously commits any damage, injury, or spoil to or upon any real or personal property whatsoever, either of a public or private nature, every such offender being convicted before a magistrate or justice of the peace is for the first offence to forfeit and pay, over and above the amount of the injury done, such sum of money not exceeding fifty rupees as to the magistrate or justice of the peace seems meet; and if any person so convicted is afterwards guilty of any of the said offences, and is convicted thereof in like manner, every such offender is, for such second offence, to be imprisoned with or without hard labour, for such term not exceeding six calendar months as the convicting magistrate or justice of the peace thinks fit. Act XXXI. 1838, sect. 29.

Stealing the whole or part of any growing tree &c., or of any pale, post, or stile, or any growing cultivated plant, &c.; or maliciously injuring any real or personal property.

4659. Every sum of money which is forfeited for the amount of any injury done (such amount in each case to be assessed by the convicting magistrate or justice of the peace) is to be paid to the party aggrieved, if known, except when such party has been examined in proof of the offence; and in every case of a summary conviction under this Act when the sum which is forfeited for the amount of the injury done, or which is imposed as a penalty by the magistrate or justice of the peace, is not paid, either immediately after the conviction or within such period as the magistrate or justice of the peace at the time of conviction appoints, it is lawful for the convicting magistrate or justice of the peace to commit the offender to the common jail or house of correction to be imprisoned only, or to be imprisoned with hard labor according to the discretion of the magistrate or justice of the peace, for any term not exceeding two calendar months, where the amount of the sum forfeited, or of the penalty imposed, or of both (as the case may be), together with the costs does not exceed fifty rupees; and for any term not exceeding four calendar months, when the amount with costs does not exceed one hundred rupees; and for any term not exceeding six calendar months in any other case; the commitment to be determinable in each of the cases aforesaid upon payment of the amount and costs. Act XXXI. 1838, sect. 30.

Application of forfeiture for such offence.

In case of the nonpayment of any forfeiture or penalty for such offence, the magistrate or justice may award a term of imprisonment.

4660. Provided always that where several persons join in the commission of the same offence, and are, upon conviction thereof, each adjudged to forfeit a sum equivalent to the amount of the injury done, in every such case no further sum is to be paid to the party aggrieved than that which is forfeited by one of such offenders only. Act XXXI. 1838, sect. 31.

If the forfeiture is realized from several, the amount forfeited by one only is to be paid to the party aggrieved.

Summary conviction for such offence is a bar to any other proceeding for the same cause.

4661. In case any person convicted of any offence punishable upon summary conviction by virtue of this Act has paid the sum adjudged to be paid together with costs under such conviction, or has suffered the imprisonment awarded for non-payment thereof, every such person is to be released from all further or other proceedings for the same cause. Act XXXI. 1838, sect. 32.

Malice against the owner of the property not essential to the offence.

4662. Every punishment and forfeiture by this Act imposed on any person maliciously committing any offence is equally to apply and to be enforced whether the offence has been committed from malice conceived against the owner of the property in respect of which it is committed or otherwise. Act XXXI. 1838, sect. 33.

Ownership of such property, if for the use of the public.

4663. It is not necessary in any proceeding either for theft or for malicious injury, spoil, or damage, to or upon any property dedicated to public use or ornament, to allege the same to be the property of any person. Act XXXI. 1838, sect. 34.

Appeals from sentences of justice of peace or magistrate under the above rules lie to the session judge, as in ordinary cases.

4664. An appeal lies from all sentences passed by any justice of the peace acting without the local limits of any of her majesty's supreme courts upon convictions had before him for any offence, and from all sentences passed by any magistrate upon convictions had before him exercising jurisdiction under the provisions of statute 53 George III. cap. 155, or Act VII. 1853, to the same authority and subject to the same rules as are provided by the Regulations and Acts of the government in the case of sentences passed by magistrates in the exercise of their ordinary jurisdiction. And cases so made the subject of appeal are not afterwards liable to revision by means of a writ of certiorari. Act IV. 1843, sect. 1. Act VII. 1853, sect. 1.

And there is no limitation within which an appeal does not lie,

4665. An appeal lies to the session judge from the order of a magistrate under sect. 105 of statute 53 George III. cap. 155, although the fine does not exceed 50 rupees. The words "subject to the same rules" refer to the rules regarding the ground upon which appeals are admissible, not to the limitation of appeals. Resolution of Nizamut Adawlut No. 1388, December 8, 1853.

But no appeal lies from an order under sect. 106.

4666. No appeal lies from the order of a magistrate under sect. 106 of the statute, as it is expressly stated therein that the magistrate's decision is to be final and conclusive to all intents and purposes. Letter of Nizamut Adawlut to Judge of Tirhoot No. 1331, November 30, 1849.

If such appeal is not preferred, a writ of certiorari may be obtained.

4667. Nothing in this Act contained is to be held to take away the power of quashing any conviction by means of a writ of certiorari, in any other case than where there has been such appeal as aforesaid. Act IV. 1843, sect. 2.

Proceedings of justices of the peace how to be removed into the supreme court by writ of certiorari.

4668. All convictions, judgments, orders, and other proceedings, which are had, made, or pronounced by or before any justice of the peace within any of the British settlements or territories in India, out of the court of oyer and terminer within and for the same, are and may be removable by writ of certiorari into the court of oyer and terminer and jail delivery of and for the same presidency, at the instance of any of the parties thereby affected or aggrieved, at any time within the space of six calendar months next after the

making or pronouncing thereof respectively; and for that purpose it is and may be lawful to and for any one or more of the justices of the said court of oyer and terminer and jail delivery, and such justice or justices is and are hereby required, at the instance of such party or parties, to grant his fiat or warrant to the keeper of the rolls of the peace, or other proper officer, to award a writ of certiorari under the seal of the supreme court of judicature for the removal and bringing of such conviction, judgment, order, or other proceeding into the said court of oyer and terminer and jail delivery; and the said court of oyer and terminer and jail delivery has full power and authority to hear and determine the matter of such conviction, judgment, order, and other proceeding so removed, and to quash or affirm the same, so that the same be not quashed for want of form, but on the merits only, and to pronounce judgment thereon, in the like manner as the court of Queen's Bench at Westminster can or may do upon convictions, judgments, orders, or other proceedings had or made by or before any justices of the peace, or court of quarter-sessions in England, removed or brought into the said court of Queen's Bench by writ of certiorari. 33 George III. cap. 52, sect. 153.

4669. Before the granting of any such writ the like recognizances are to be entered into, and the party or parties applying for such writ are to be put under the same terms and conditions, in all respects, as are by law directed and provided in the cases of writs of certiorari awarded or granted for the removal of any conviction, judgment, order, or other proceeding, had or made by or before any justice or justices of the peace in England into the said court of Queen's Bench, or as by the usage and practice of the same court hath been accustomed. 33 George III. cap. 52, sect. 154.

On what conditions writs of certiorari are to be granted.

CHAPTER II.

OF FOREIGNERS.

4670. Every foreigner shall, on his arrival in any part of the territories in the possession of and under the British government in India from any port or place not within the said territories, or from any port or place not subject to the provisions of this Act, forthwith report himself to the commissioner of police, if he shall arrive at any of the presidency towns; or, if he shall arrive at any other place, to the magistrate or to such other officer as shall be appointed to receive such reports by the governor general in council, or (in places within their respective jurisdictions) by the executive government of any presidency or place, or by the chief commissioner of the Punjab, the chief commissioner of Oude, or the commissioners of Mysore, Coorg, Nagpore, Scinde, Pegu, and the Tenasserim and Martaban provinces respectively. Provided that nothing contained in this section shall extend to any foreigner being the master or commander of a ship or vessel, or employed therein. Act XXXIII. 1857, sect. 1.

Every foreigner to report his arrival in India;

except a foreigner being the master of a vessel or employed therein.

What to be stated
in the report.

4671. The report shall be in writing; and shall be signed by the person reporting himself; and shall specify his name or names, the nation to which he belongs, the place from which he shall have come, the place or places of his destination, the object of his journey, and the date of his arrival in the said territories: and the report shall be recorded by the officer to whom it is made. Act XXXIII. 1857, sect. 2.

Foreigners being
masters of vessels or
employed therein,
to report themselves
when they come to
be so employed.

4672. If any person included in the proviso to section 1 shall remain in any part of the said territories after he shall have ceased to be employed in a ship or vessel, he shall forthwith report himself in manner aforesaid. Act XXXIII. 1857, sect. 3.

Foreigners ne-
glecting to report
themselves to be
dealt with in like
manner as foreign-
ers travelling with-
out a license.
No foreigner to
travel in India
without a license.

4673. If any foreigner shall neglect to report himself as required by this Act, he may be dealt with in the manner hereinafter provided in respect of foreigners travelling without a license. Act XXXIII. 1857, sect. 4.

4674. No foreigner shall travel in or pass through any part of the territories in the possession of and under the British government in India without a license. Act XXXIII. 1857, sect. 5.

License by whom
to be granted.

4675. Licenses under this Act may be granted by the secretary to the government of India in the foreign department; or by the chief secretary to the governments of Fort Saint George and Bombay respectively; or by the chief commissioner of the Punjab, the chief commissioner of Oude, or the commissioners of Mysore, Coorg, Nagpore, Scinde, Pegu, and the Tenasserim and Martaban provinces respectively; or by such other officers as shall be specially authorized so to do by the governor general in council, or by the executive government of any presidency or place, or by any of the chief commissioners or commissioners aforesaid. Act XXXIII. 1857, sect. 6.

What to be stated
in license.

4676. Every such license shall state the name or names of the person to whom the license is granted, the nation to which he belongs, the district or districts through which he is authorized to pass, or the limits within which he is authorized to travel, and the period (if any) during which the license is intended to have effect. Act XXXIII. 1857, sect. 7.

License may be
granted subject to
conditions and may
be revoked.

4677. The license may be granted subject to such conditions (if any) as the governor general in council, or the executive government of any presidency or place, or (as regards their several jurisdictions) any of the said chief commissioners or commissioners, may by any general order direct; or as the officer granting the license may deem necessary: and the license may be revoked at any time by the governor general in council, or by the executive government of any presidency or place, or by the officer granting the same. Act XXXIII. 1857, sect. 8.

Foreigners travel-
ling without or con-
trary to the condi-
tions of license may
be apprehended.

4678. If any foreigner travel in or attempt to pass through any part of the said territories without such license as aforesaid, or beyond the districts or limits mentioned therein, or after such license shall have been revoked, or shall violate any of the conditions therein specified, he may be apprehended without warrant by a magistrate, deputy magistrate, or assistant to a magistrate, or by any European commissioned officer in the service of her Majesty, or by a member of a volunteer corps enrolled by authority of government whilst on duty, or by any police officer. Act XXXIII. 1857, sect. 9.

4679. If any person be apprehended by a person not being a magistrate or a police officer, he shall be delivered over as soon as possible to a police officer, and carried before a magistrate; and whenever any person shall be apprehended by or taken before a magistrate, such magistrate shall forthwith report the case to the government to which he is subject, and shall cause the person brought before him to be discharged, or to be conveyed to one of the presidency towns, or to be detained pending the orders of such government. Act XXXIII. 1857, sect. 10.

Procedure upon apprehension.

Magistrate to report to government.

4680. All persons apprehended or detained under the above-mentioned provisions of this Act, may be admitted to bail by a magistrate or by any of the officers authorized to grant licenses, and shall be put to as little inconvenience as possible during their detention in custody. Act XXXIII. 1857, sect. 11.

Persons apprehended may be admitted to bail.

4681. The governor general in council, or the executive government of any presidency or place, may order any such person to remove himself from the said territories by sea or by such other route as the government may direct; or the government may cause him to be removed from the said territories by such route and in such manner as to the government shall seem fit. Act XXXIII. 1857, sect. 12.

Removal of persons apprehended.

4682. The governor general in council, or the executive government of any presidency or place, or any of the chief commissioners or commissioners mentioned in section 6 of this Act, may by writing order any foreigner within his jurisdiction to remove himself from the territories in the possession of and under the British government in India or to remove himself therefrom by a particular route to be specified in the order. Act XXXIII. 1857, sect. 13.

Government may order any foreigner to remove himself.

4683. If any foreigner ordered to remove himself from the said territories, or ordered to remove himself therefrom by any particular route, shall neglect or refuse so to do; or if any foreigner, having removed himself from the said territories in consequence of an order issued under any of the provisions of this Act, or having been removed from the said territories under any of the said provisions; shall wilfully return to the said territories without a license in writing granted by the governor general of India in council or by the government or officer under whose order he shall have removed himself or been removed;—such foreigner may be apprehended and detained in safe custody, until he shall be discharged therefrom by order of the governor general in council, or of the executive government, or of one of the said chief commissioners or commissioners mentioned in section 6 of this Act, within whose jurisdiction he shall be so apprehended or detained, upon such terms and conditions as the said governor general in council, executive government, chief commissioner, or commissioner shall deem sufficient for the peace and security of the British territories, and of the allies of her majesty and of the neighbouring princes and states. Act XXXIII. 1857, sect. 14.

Foreigner refusing to remove or returning without license after removal may be apprehended and detained.

4684. The governor general in council, or the executive government of any presidency or place, or any of the chief commissioners or commissioners mentioned in section 6 of this Act, may by order prohibit any person or persons, or any class or classes of persons,

Government may prohibit persons, not being natural born subjects, from travelling or pass-

ing through any part of India without a license.

not being a natural-born subject or subjects of her majesty within the meaning of section 81, 3 and 4 William IV, cap. 85, from travelling in or passing through any part of the said territories, or from passing from any part of India to another, without a license to be granted by such officer or officers as shall be specified in the order; and if such person shall wilfully disobey such order, he may be apprehended without warrant by any of the officers specified in section 9 of this Act, and carried before a magistrate and dealt with under the provisions of section 10 in the same manner as if he were a foreigner; and the government may order such person to be detained in safe custody, or under the surveillance of the police, so long as it may be deemed necessary for the peace and security of the British territories. Act XXXIII. 1857, sect. 15.

Police officer may board vessel to ascertain whether foreigners are on board.

4685. It shall be lawful for the commissioner of police, or for a magistrate, or his assistant, or for any officer appointed to receive reports as mentioned in the first section of this Act, or for any police officer under the authority of such commissioner or magistrate, to enter any ship or vessel in any port or place within the territories in the possession of and under the control of the British government in India in order to ascertain whether any foreigner bound to report his arrival under section I of this Act, is on board of such ship or vessel; and it shall be lawful for such commissioner of police, or other officer as aforesaid, to adopt such means as may be reasonably necessary for that purpose; and the master or commander of such ship or vessel shall also, before any of the passengers are allowed to disembark, if he shall be required so to do by such commissioner of police, or other officer as aforesaid, deliver to him a list, in writing, of the passengers on board, specifying the ports or places at which they embarked, and the ports or places of their disembarkation or intended disembarkation, and answer, to the best of his knowledge, all such questions touching the passengers on board the said ship or vessel, or touching those who may have disembarked in any part of India, as shall be put to him by the commissioner of police, or other officer as aforesaid. If any foreigner on board such ship or vessel in any part of India shall refuse to give an account of his objects of pursuit in India, or if his account thereof shall not be satisfactory, the officer may refuse to allow him to disembark, or he may be dealt with in the same manner as a foreigner travelling in India without a license. Act XXXIII. 1857, sect. 16.

Master of vessel to furnish list of passengers, and to give information respecting them.

Foreigner refusing to give account of himself not to be allowed to disembark.

Obstructing officers.

4686. Whoever intentionally obstructs any officer in the exercise of any of the powers vested in him by this Act, shall, upon conviction before a magistrate, be liable to a fine not exceeding one thousand rupees, or to imprisonment for any term not exceeding six months, or to both. Act XXXIII. 1857, sect. 17.

Neglect by master of vessel to comply with requisitions of Act.

4687. If the master or commander of any ship or vessel shall wilfully neglect or refuse to comply with the requisitions of this Act, he shall, on conviction before a magistrate, be liable to a fine not exceeding two thousand rupees. Act XXXIII. 1857, sect. 18.

Punish for false answer or report.

4688. Whoever shall wilfully give a false answer to any question which by this Act he is bound to answer, or shall make any false report, shall upon conviction before a magistrate, be liable to imprisonment for a period not exceeding two years, and shall be liable to a fine not exceeding one thousand rupees. Act XXXIII. 1857, sect. 19.

4689. The word "foreigner" in this Act shall be deemed to mean a person not being either a natural-born subject of her majesty within the meaning of section 81, 3 and 4 William IV, cap. 85, or a native of a place in the possession and under the government of the British government in India. The word "magistrate" shall include every person exercising the full powers of a magistrate, and a justice of the peace. Act XXXIII. 1857, and "magistrate," sect. 20.

Interpretation of "foreigner ;"

4690. If a question shall arise whether any person alleged to be a foreigner and to be subject to the provisions of this Act is a foreigner or not, or is or is not subject to the provisions of this Act, the onus of proving that such person is not a foreigner, or is not subject to the provisions of this Act, shall lie upon such person. Act XXXIII. 1857, sect. 21.

Proof of being a foreigner.

4691. This Act shall continue in force for two years :* and it shall not extend to the settlement of Prince of Wales' Island, Singapore, and Malacca, or to the territory of Aden, unless the same shall be specially declared applicable to such settlement or territory by the governor general of India in council. Act XXXIII. 1857, sect. 22.

Duration of Act. * i e to Dec. 5. 1859.

Act not to extend to certain places unless so declared.

4692. The foregoing provisions of this Act shall not extend to any foreign minister duly accredited by his government, nor to any consul or vice-consul, nor to any person under the age of fourteen years, nor to any person in the service of the British government. The governor general in council, or (as regards their respective jurisdictions) the executive government of any presidency or place, or any of the chief commissioners or commissioners mentioned in section 6 of this Act, may exempt any person, or any class of persons, either wholly or partially, or temporarily or otherwise, from all or any of the provisions of this Act ; and may at any time revoke any exemption. Act XXXIII. 1857, sect. 23.

Exceptions and exemptions

4693. Any officer of government or other person who, prior to the passing of this Act, may have done any thing which would have been justified by this Act if it had been in force at the time, is hereby indemnified for so doing ; and no action or other proceeding shall be commenced or prosecuted in respect of any thing so done. Act XXXIII. 1857, sect. 24.

Indemnity.

CHAPTER III.

OF HUSBAND, WIFE, AND CHILDREN.

4694. Any person amenable to the jurisdiction of the zillah and city courts, who possesses the means of supporting his wife and children, and notwithstanding deserts them and wilfully neglects to provide for their support, on proof thereof to the satisfaction of the magistrate, or joint magistrate, of the zillah in which the party so deserting and neglecting his family resides, is to be required to provide for the maintenance of his family in a suitable manner, according to his situation and circumstances in life ; and on his failing so to do, is to be considered guilty of a misdemeanor, and is liable to imprisonment

Persons neglecting to support their wives and families, are to be required to do so by the magistrate ; and on failure thereof are liable to imprisonment.

for a period not exceeding one month. He is also liable to a repetition of the sentence upon any subsequent conviction of a similar misdemeanor, after having been required to provide for the support of his family. Provided, however, that nothing in this section is to render a husband liable to punishment for not maintaining his wife, if it be clearly shown that the latter has forfeited all just claim to support from her husband, by living in adultery with another person, or by other acts implying wilful abandonment of his protection.^(a) Reg. VII. 1819, sect. 3.

This does not apply to the case of a wife abandoning her husband's protection.

This may be applied to illegitimate children; and to their mothers.

4695. The above section is to be held applicable to illegitimate as well as to legitimate children; and may also be applied, at the discretion of the magistrate, to secure a proper maintenance for the mothers of illegitimate offspring, whilst in a state of pregnancy, or having the care of an infant child. Reg. VII. 1819, sect. 4.

Rule regarding the evidence of the mother of an illegitimate child *quoad* the alleged father.

4696. The evidence of the mother of an illegitimate child, against the alleged father, is *primâ facie* good as far as it goes; but should be sifted and weighed as any other testimony, and tested, as far as is practicable, by any circumstantial evidence that may offer. The result must then depend on the belief or otherwise reposed in it by the magistrate. Const. No. 1163.

The husband cannot be required to furnish security.

4697. Where the wife alleged that her husband was about to leave the country, it was held that the magistrate could not require security from him to maintain her. He should require the husband to enter into an engagement in writing to provide for his wife; and should punish any, and every, subsequent breach of such engagement distinctly complained of and proved, as a misdemeanor by imprisonment. Const. No. 992.

Power of assistant in such cases.

4698. Cases under the above provisions may be referred to principal sudder ameen [and, *semble*, to other officers exercising the primary powers of an assistant] for investigation and report. If such officers are vested with special powers they are competent to dispose of such cases. Const. No. 1265. C. O. No. 7 of vol. 4.

Not applicable to European British subjects.

4699. The provisions of sect. 4, Reg. VII. 1819 [and therefore of sect. 3 also] are not applicable to European British subjects as defendants. Const. No. 1141.

The magistrate cannot interfere to restore a wife to her husband; or a betrothed woman.

4700. The magistrates are invested with no authority to interfere with a view to restore a wife to her husband; applications of such a nature should be preferred in the civil court in the form of a regular suit. So, a magistrate was considered to have acted properly in refusing to interpose his authority to compel the delivery of a betrothed woman to a petitioner. And in a case of this nature, in which a magistrate had interfered, his order was rescinded, and the nizamat adawlut held, as a general rule, that all suits, or complaints, relative to marriage should be heard in the civil courts. C. O. No. 19 of vol. 3. *L. P.* Const. Nos. 148 and 725.

Magistrate may release a wife confined by her husband, and in dread of her life.

4701. Where a magistrate found a lady forcibly detained in a room in the zenana, and in dread of her life, and released her from confinement, allowing her to remove to an-

(a) This is strictly in accordance with Mahomedan law: according to which the amount of subsistence is to vary according to any change which may occur in the circumstances of the husband.

other place, the court held that he was justified in exercising such interference. Resolution N. A. No. 242, March 24, 1856. *L. P.*

4702. Where a man of the Christian religion refused to resign the guardianship of a female child, aged two years, to its Hindu mother, with whom he had cohabited, but whom he had since dismissed with a maintenance of four rupees a month and a house for life; and she applied to the magistrate to obtain possession of the child for her: the *mizamut adawlut* held that he had no authority to interfere, and that the petitioner should be referred to the civil court. But more lately, where a magistrate referred the following questions for decision; viz.—1. Is any power vested in a magistrate under the regulations to compel a wife who has abandoned the society of her husband, or who has been abandoned by her husband, to restore to the husband the children begotten during the course of the marriage?—2. Is any power vested in a magistrate to compel a party, who, in the assumed character of guardian, next of kin, and the like, may have enticed away or carried off any infants from another party (under whose charge or in whose possession they were), to restore the infants to the prosecutor or into the court of the magistrate, that the magistrate may decide to whom the charge of the infants legally belongs?—and the sudder courts differed in opinion; the government on a reference did not concur in the opinion that a magistrate is not competent to exercise any interference; but, considering that in the decision of every case regard should be had to its particular circumstances, held that, until some definite rules should be prescribed for the guidance of the magistrate in these cases, the safest course would be to refrain from attempting to issue any general instructions, and to leave the several magistrates to exercise a sound discretion in exerting their official authority or not, according as the propriety of one or the other course might be indicated by the circumstances of each case. Const. No. 1060. C. O. No. 239 of vol. 2.

Competency of magistrate to interfere in cases which involve the right of parents and others to the guardianship of children.

4703. If a Mahomedan woman is charged with bigamy, the magistrate should enquire whether the marriages have been performed in a strictly legal manner under the Mahomedan law. It is within his option to punish the accused himself, or to commit the case to the sessions court, if he considers that the offence proved is deserving of a punishment beyond that which he is competent to inflict. Letter of N. A. to Judge of 24-Pergunnahs, No. 512, May 16, 1853.

Bigamy.

4704. Where a person clandestinely married a female ward (also a minor) placed under a guardian appointed by the sudder dewanny *adawlut* under Reg. I. 1800, without the consent of such guardian, and in opposition to the express orders of the civil court, it was held that no offence had been committed under the Mahomedan law, and consequently that the charge was not cognizable in the criminal court. Const. No. 637.

Clandestine marriage of a female ward.

4705. Magistrates and session judges are to take every proper occasion, especially when the case of a child being murdered to obtain its jewels or ornaments comes officially before them, to impress upon the minds of parents, and other persons present in court, the danger to which children are exposed by the practice of allowing them to go abroad with jewels and ornaments, unless attended by persons able to protect them, and the consequent

Magistrates and judges to point out to parents and others the danger of allowing children to go abroad with jewels and ornaments.

imprudence and impropriety of their perseverance in a practice so often attended with effects as lamentable to themselves as fatal to the lives of their children.(a) C. O. No. 195 of vol. 1.

CHAPTER IV.

OF MASTERS AND SERVANTS, WORKMEN, AND CONTRACTS OF LABOR.

Workmen engaging to serve for a stipulated term, or contracting for the performance of a specific work, and wilfully quitting the service or neglecting to perform the work,—how punishable.

4706. All persons who voluntarily engage to serve as workmen of any description for a stipulated term, or who voluntarily contract for the performance of any specific work, and who, without good and sufficient cause, wilfully quit the service so engaged for before the expiration of the term agreed upon, or wilfully neglect to perform the work so contracted for, are to be deemed guilty of a misdemeanor; and on conviction before a magistrate, or joint magistrate, are liable to a sentence of imprisonment not exceeding one

(a) The following proclamation was ordered to be published at all the public cutcheries, and police thanas. the necessity for such a proclamation will be evident on a reference to the nature and number of cases quoted in para. 3979.—“ It having come to the knowledge of government through various channels of information and particularly from the reports of the zillah and city magistrates, the courts of circuit, and superintendents of police, that frequent instances still occur in many parts of the territory subject to this presidency, especially in the Western provinces, of the murder of children for the purpose of obtaining their gold and silver ornaments; and the Honorable the Vice-President in council, being desirous of preventing as far as possible this atrocious and lamentable crime, so distressful to the parents and other relatives of the numerous children thus murdered from year to year, without having recourse to measures of a prohibitory and penal nature, which might interfere with established usages, and occasion loss of property or personal inconvenience; it is hereby notified by the court of nizamat adawlut, with the sanction of government, to all parents, guardians, and others, having the charge of young children whether of the Hindu or Mussulman religion, that whereas experience has shewn the great danger of robbery and murder to which children are exposed by being allowed to go abroad from the house of their parents or other persons, having the care of them, with gold or silver ornaments, especially when not attended by trustworthy persons capable of protecting them, it is the obvious duty of all parents and others intrusted with the care of children, to guard against such danger by removing the cause of temptation, and by not permitting any child under their charge to go from home with any gold or silver ornament, except in company with themselves, or with other persons on whom they can depend to guard against the possibility of any calamitous consequence which, they must be well aware, has too often ensued from a neglect of such precaution. The judges of circuit and the zillah and city magistrates have been further instructed to take every proper occasion of impressing upon the minds of parents and other persons, who may be present at criminal trials in cases of child-murder, the danger to which children are exposed by the imprudent practice of allowing them to go abroad with jewels and ornaments; and it is hoped, that the respectable inhabitants of the country, as well from feelings of natural affection, as from a sense of moral duty, will be induced to shew a strict and ready attention to such communications, as well as to the admonition contained in this notification, which can have no other object than to preserve the lives of many helpless children, and to prevent the distress of their relations from the loss of them. All parents and others having the care of children are accordingly hereby expected and enjoined to maintain by their example and influence, a careful observance of the precaution recommended to them in this proclamation, which it may be confidently expected will effectually check the prevalent crime adverted to, and thereby preclude the necessity of adopting any other remedy.”

month. The magistrate or joint magistrate may likewise require the persons so convicted to complete their stipulated term of service, or to perform the work contracted for, if it appears just and proper to require the same; and any subsequent conviction of wilful neglect to comply with such requisition, is punishable by a further sentence of imprisonment not exceeding two months. Reg. VII. 1819, sect. 5.

4707. The provisions of the foregoing section are also declared applicable to domestic servants, who engage to serve for any fixed term; or during the performance of any specific service; or, though no such engagement has been entered into, are employed from month to month; and without good and sufficient cause wilfully quit the service of their employers before the expiration of the fixed term; or before the completion of the stipulated service; or, with respect to monthly servants, before giving previous notice for a period not less than fifteen days. Reg. VII. 1819, sect. 6, cl. 1.

So, domestic servants engaging for a fixed term, or a specific service, or employed from month to month.

4708. The sentence of two months' imprisonment prescribed above, in cases of workmen neglecting to finish their work, is intended as a punishment for wilful neglect to perform work undertaken, and not as a means of compelling the performance of it; and consequently the magistrate is not competent to repeat the punishment of two months' imprisonment, or to take any further measure towards compelling an actual performance of the work engaged for. Const. No. 384.

Beyond the prescribed punishment, the magistrate can take no measure to compel the performance of the work engaged for.

4709. There must be a stipulated term of service, or a contract for the performance of a specific work, to render the above provision applicable to the case of mistress, mochis, or other artisans, who have taken advances from their employers and agreed to work for the same. Such cases may be prosecuted either in the district in which the agreement was executed, or in that in which the defendant resides. Const. No. 1329.

There must be a stipulated term, or a contract for a specific work.

Venue.

4710. The above provisions were never intended to have, nor have, any reference to the wages of a mokhtar; they apply to workmen and domestic servants only. Const. No. 770.

This does not apply to a mokhtar;

4711. The gomash-tah of an indigo planter, superintending an out-factory, cannot be considered as a domestic servant, or as a workman. The above provisions therefore are not applicable to such a case. (a) Const. No. 924.

or to a gomash-tah superintending an out-factory;

4712. These provisions do not apply to village chokeedars; and the realization of their wages under them is illegal. Reports *L. P.* 1854, part 1, page 260.

or to a village chokeedar.

4713. The above provisions are not applicable to the enforcement of contracts for furnishing hakeris and bullocks under engagements to indigo planters; but they may be applied in the case of the driver of a hakeri and cattle, his own property, who engages therewith to perform certain work, and wilfully neglects or refuses to fulfil his engagement. C. O. Nos. 186 and 197 of vol. 2.

Nor is it applicable to contracts for the supply of hakeris and bullocks.

(a) It was held at the same time that the provisions of sect. 20, Reg. VII. 1799 (which refer to native agents employed by landholders and farmers in the management of their estates or farms, or collection of their rents) are equally inapplicable to the gomash-tahs and mohurirs of indigo-planters.

Beparis in the service of government suing for arrears of wages, to be referred to civil court.

4714. The complaints of beparis for the adjustment of their claims for the hire of their hakeris and bullocks, while in the service of government, are not cognizable by the magistrate, but should be preferred in the civil court. Const. No. 560.

A contract with security to convey goods to a certain place cannot be enforced under these provisions.

4715. Where A entered into a contract with B, on the security of C and D, for furnishing a boat to convey certain goods of A to a fixed place, and afterwards B unloaded the goods, and refused to carry them on according to his agreement, it was held, that, as the contract was of a purely civil nature, and as security was taken for the performance of it, the above provisions did not apply; and that the person aggrieved must seek his remedy in the civil court. Const. No. 1085.

Rule to control the discharge of servants in certain cases.

4716. In like manner no master, or other person, employing a servant for a fixed term, or for a specific service, or from month to month, is at liberty, without good and sufficient cause, to discharge such servant, against his will, before the expiration of the fixed term; or the completion of the specified service; or, with respect to servants employed from month to month, without giving previous warning of the intended discharge for a period of at least fifteen days, or paying his wages for that period. Reg. VII. 1819, sect. 6, cl. 2.

What award the magistrate is to make in such cases.

4717. It is the duty of the magistrates and joint magistrates, on applications made to them upon the prescribed stamp paper, to enforce the provisions of the above clause by causing payment to be made to any servant, who is discharged in opposition thereto, of a sum equal to half a month's wages, in addition to any arrear of wages which is due to him at the time of his discharge; or if the servant has been engaged for a fixed term, or for a specific service, by causing payment to be made to him of such sum as appears fully adequate to any loss sustained by him from being discharged before the time agreed upon. Reg. VII. 1819, sect. 6, cl. 3.

Provido in case of misconduct of servant; and where the servant or workman is ill treated, or has other sufficient cause for leaving the service.

4718. Provided however, that no servant is to be entitled to recover more than his arrear of wages, when he is discharged for any misconduct proved to the satisfaction of the magistrate or joint magistrate, and appearing sufficient to warrant his discharge. Nor is any workman or servant to be liable to punishment under the provisions of this regulation, when it is proved to the satisfaction of the magistrate or joint magistrate, that his quitting the service of his employer, without previous notice, or before the expiration of a stipulated term, or without having completed the performance of any work contracted for, was occasioned by gross mal-treatment, or by non-payment of wages due, or by any other cause which appears to the magistrate or joint magistrate sufficient to justify or excuse the act complained of. Reg. VII. 1819, sect. 6, cl. 4.

Complaints for arrears of wages ought to be made within a year; and preferred on oath.

4719. The intention of the above provisions evidently is, that the complaint for the recovery of wages should be made immediately on the occurrence of the cause of complaint; *i. e.* within the period of one year; a case therefore in which nearly two years and a half had elapsed, was considered not properly cognizable by the magistrate. Such complaints, like all other complaints in a criminal court, must be preferred on oath. Const. No. 582. The sum which may be recovered in the criminal court

as wages, is not limited by the above provisions: and, under the last quoted construction, the servant may sue in the criminal court to recover wages for any period not exceeding one year. Const. No. 913. Comparing the two foregoing constructions, it appears that claims for wages under Reg. VII. 1819 should ordinarily be brought within a year from the time the wages become due. No period being, however, fixed by law, the court cannot lay down a positive rule of limitation in the matter. It rests with the deciding authorities to dispose of each case on its merits, according to the special circumstances of it, advertence being had to any excessive delay in preferring the claim, as to other points involved in it. Letter of N. A. to Judge of Tirhoot, No. 1331, Nov. 30, 1849.

Any amount of wages not exceeding arrears for one year may be recovered.

But the period is not fixed by law, and is therefore left to discretion.

4720. In the event of parties, against whom an award for arrears of wages to domestics passed under the above provisions is given, not immediately paying the same, the magistrate should proceed to levy the amount by the distress and sale of the defendant's personal property. Const. No. 1053.

Award how to be enforced.

4721. Assistants vested with special powers are competent to dispose of cases under the above provisions: and such cases may be referred to principal sudder ameen [and, *semble*, to other officers exercising the primary powers of an assistant] for investigation and report. C. O. No. 7 of vol. 4. Const. No. 1265.

Powers of assistants in such cases.

4722. In all cases in which it has been the intention of the legislature to render a summary decision subsidiary to a suit in the civil court, the regulations contain specific provision to that effect; as for instance in cases coming under the provisions of Reg. XV. 1821.* No such provision is however made as regards cases of the nature of those specified in sect. 6, Reg. VII. 1819; and therefore cases decided by the criminal authorities under the rules laid down in that section are not open to a civil action. The civil court of course can have no power to issue an injunction to a magistrate for the purpose of stopping execution of his order. Const. No. 1158.

Cases decided by the criminal authorities under these provisions are not open to a civil action; nor can the civil court interfere with the magistrate's order.

* *Now Act IV.* 1840.

4723. The rule contained in cl. 3, sect. 6, Reg. VII. 1819, cannot be considered applicable to European British subjects; and consequently a magistrate, even though a justice of the peace, cannot compel such person to pay the wages of a servant. (a) Yet the magistrate may, at the suit of a European British subject, proceed against native servants or workmen quitting their employment, &c. Const. Nos. 340 and 345.

How far these provisions are applicable to European British subjects.

(a) But the magistrate, whether he is a justice of the peace or not, may take cognizance of such complaints against European British subjects, under the provisions of 53 George III. cap. 155, sect. 106. See *para.* 4625.

CHAPTER V.

OF INSANE PERSONS.

Note.—For rules regarding crimes committed by insane persons, and the custody of persons acquitted on the ground of insanity, see page 31 et seq.

*

Wandering and dangerous lunatics to be sent to the magistrate.

Certificate and order for reception in asylum.

In certain cases, a lunatic may be committed to the care of his friends or relatives;

* or sent to a licensed asylum.

In case of neglect or cruel treatment of a lunatic,

4724. It shall be the duty of every darogah or district police officer to apprehend and send to the magistrate all persons found wandering at large within his district who are deemed to be lunatics, and all persons believed to be dangerous by reason of lunacy. Whenever any such person as aforesaid is brought before a magistrate, the magistrate, with the assistance of a medical officer, shall examine such person, and if the medical officer shall sign a certificate in the form A in the schedule to this Act(a), and the magistrate shall be satisfied on personal examination or other proof that such person is a lunatic and a proper person to be detained under care and treatment, he shall make an order for such lunatic to be received into the asylum established for the division in which the magistrate's jurisdiction is situate; or, if such lunatic is not a native of the country and the circumstances of the case so require, into a lunatic asylum at the presidency; and shall send the lunatic in suitable custody to the asylum mentioned in such order. Provided that, if any friend or relative of any lunatic, who is believed to be dangerous, shall undertake in writing to the satisfaction of the magistrate that such lunatic shall be properly taken care of, and shall be prevented from doing injury to himself or others, the magistrate, instead of sending him to an asylum, may make him over to the care of such friend or relative. Provided also that, if any such friend or relative shall desire that the lunatic may be sent to a licensed asylum instead of the public asylum of the division, and shall engage in writing to the satisfaction of the magistrate to pay the expenses which may be incurred for the lodging, maintenance, medicine, clothing, and care of the lunatic in such asylum, the magistrate may send the lunatic to the licensed asylum mentioned in the engagement. Act XXXVI. 1858, sect. 4.

4725. If it shall appear to the magistrate, on the report of a police officer or the information of any other person, that any person within the limits of his jurisdiction

(a)

FORM A.

CERTIFICATE OF MEDICAL OFFICER.

I, the undersigned, (*here enter name and official designation*), hereby certify that I, on the _____ day of _____ at _____, personally examined (*here enter name and residence of lunatic*), and that the said _____ is a lunatic (*or an idiot or a person of unsound mind*) and a proper person to be taken charge of, and detained under care and treatment, and that I have formed this opinion on the following grounds namely:—

1. Facts indicating insanity observed by myself (*here state the facts*).
2. Other facts (if any) indicating insanity communicated to me by others (*here state the information and from whom*).

(Signed) _____

deemed to be a lunatic is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the charge of him, the magistrate may send for the supposed lunatic, and summon such relative or other person as has or ought to have the charge of him; and if such relative or other person be legally bound to maintain the supposed lunatic, the magistrate may make an order for such lunatic being properly cared for and treated; and, if such relative or other person shall wilfully neglect to comply with the said order, may commit him to jail for a period not exceeding one month. If there be no person legally bound to maintain the supposed lunatic, or if the magistrate think fit so to do, he may proceed as prescribed in the last preceding section, and, upon being satisfied in manner aforesaid that the person deemed to be a lunatic is a lunatic and a proper person to be detained under care and treatment, may make an order for his reception into such asylum as aforesaid. It shall be the duty of every darogah or district police officer to report to the magistrate every such case of neglect or cruel treatment as aforesaid which may come to his knowledge. Act XXXVI. 1858, sect. 5.

magistrate may order relative, or person bound to maintain him, to provide for the proper treatment of such lunatic.

If no person bound to maintain him, magistrate may make an order for his reception in asylum.

Darogah to report every such case of neglect.

4726. All acts which the magistrate is authorized or required to do by the two last preceding sections, may be done in the presidency towns and the stations of the Straits settlement by the commissioner of police; and all duties which a darogah or district police officer is authorized or required to perform may be performed in any of the said towns and stations by an officer of the police force not below the rank of inspector. Act XXXVI. 1858, sect. 6.

Commissioner of police, &c., to act in the presidency towns and Straits settlement.

4727. Except as otherwise hereinbefore provided, no person shall be received into a lunatic asylum in any presidency town or in any station of the Straits settlement without an order under the hand of some person in the Form B in the schedule to this Act(b), to-

Order and certificate for reception into an asylum in presidency towns and Straits settlement.

(b)

FORM B.

ORDER FOR THE RECEPTION OF A PRIVATE PATIENT.

I, the undersigned, hereby request you to receive A. B., a lunatic [or an idiot, or a person of unsound mind], as a patient into your asylum. Subjoined is a statement respecting the said A. B.

(Signed) Name.

Occupation (if any).

Place of abode.

Degree of relationship (if any), or other circumstance of connection with the patient.

Dated this day of one thousand eight hundred and

To Superintendent of the asylum at [describing the asylum].

STATEMENT.

[If any of the particulars in this Statement be not known, the fact to be so stated.]

Name of patient, with Christian name at length.

Sex and age.

Married, single, or widowed.

Condition of life, and previous occupation (if any).

The religious persuasion, as far as known.

Previous place of abode.

Whether first attack.

gether with such statement of particulars as is contained in the said Form B; nor, unless such person has been found lunatic by inquisition or under an enquiry directed by an order of one of the courts of judicature established by royal charter, without the medical certificate, containing the particulars in Form A in the schedule to this Act, of two persons each of whom shall be a physician or surgeon and one of whom shall be a presidency surgeon or a surgeon in the employment of the government. When such order is presented, the visitors or manager of the asylum, before admitting the lunatic into the asylum, may require the friends of the said lunatic to engage to pay the expenses which may be incurred for the lodging, maintenance, clothing, medicine, and care of the lunatic, unless it shall appear to the said visitors that they have not sufficient means of doing so. Act XXXVI. 1858, sect. 7.

In other places
no person to be re-
ceived into asylum
without order of
civil court.

4728. In places other than those specified in the last preceding section no person shall be received into a lunatic asylum, except as otherwise hereinbefore provided, without an order of the civil court. Act XXXVI. 1858, sect. 8, cl. 1.

Application for
order to be made by
a guardian, if a
guardian has been
appointed

4729. When any person has been adjudged to be a lunatic, and a guardian for such lunatic has been appointed by the court of wards or the collector or by the civil court, if such guardian shall desire that the lunatic be admitted into a lunatic asylum, he shall make application to the civil court, and the judge, with the assistance of a medical officer, shall examine such lunatic, and if the medical officer shall sign a certificate in the Form A in the schedule to this Act, and the judge shall be satisfied that the lunatic is a proper person to be detained under care and treatment in a lunatic asylum, he shall make an order for such person to be received into the asylum established for the division in which his jurisdiction is situate, or, if he think fit, into any licensed asylum mentioned in the application. Act XXXVI. 1858, sect. 8, cl. 2.

Application
where no guardian
has been appointed.

4730. If any relative or friend of any person for whom a guardian has not been appointed by the court of wards or the collector or by the civil court, desires that such

Age (if known) on first attack.

When and where previously under care and treatment.

Duration of existing attack.

Supposed cause.

Whether subject to epilepsy.

Whether suicidal.

Whether dangerous to others

Whether found lunatic by inquisition or enquiry under order of court, and date of commission or order for inquisition or enquiry.

Whether any member of patient's family has been or is affected with insanity.

(Signed) Name.

[Where the person signing the statement is not the person who signs the order, the following particulars concerning the person signing the statement are to be added; namely,]

Occupation (if any).

Place of abode.

Degree of relationship (if any), or other circumstances of connection with the patient.

person may be admitted into a lunatic asylum, he may make application to the civil court ; and the judge, if he see sufficient reason for so doing, shall enquire into the fact of lunacy in the same manner as if an application had been made to the civil court under the provisions of section 3, Act XXXV. 1858 ; and if the lunacy be established, the judge may then proceed in the manner prescribed in the second clause of this section. Act XXXVI 1858, sect. 8, cl. 3.

4731. Whenever the judge shall make an order for the reception of any person into a lunatic asylum, he shall, at the same time, make an order for the payment of the expenses to be incurred for the lodging, maintenance, clothing, medicine, and care of such person ; and such expenses shall be recovered by the judge on the application of the visitors or manager of such asylum. Provided however that, if it shall appear to the satisfaction of the judge that the lunatic has not sufficient property and that no person legally bound to maintain the said lunatic has sufficient means for the payment of such expenses, he shall certify the same in the order for the reception of the lunatic into the asylum, instead of making such order for the payment of expenses as aforesaid. Act XXXVI. 1858, sect. 8, cl. 4.

Order for payment of expenses.

If the lunatic and person bound to maintain him have not sufficient means.

4732. It shall be lawful for three of the visitors of any asylum, of whom one shall be a medical officer, by writing under their hands, to order the discharge of any person detained in such asylum. When such order is given, if the person is detained under the order of any public officer, notice of the order of discharge shall be immediately communicated to such officer. Act XXXVI. 1858, sect. 9.

Order of discharge from asylum.

4733. When any relative or friend of a lunatic detained in any asylum under the provisions of section 4, section 5, or section 6 of this Act, is desirous that such lunatic shall be delivered over to his care and custody, he shall make application to the magistrate or commissioner of police under whose order the lunatic is detained ; and the magistrate or commissioner of police, if he think fit, after communication with the visitors or with one of them being a medical officer, and upon the undertaking in writing of such relative or friend to the satisfaction of the said magistrate or commissioner that such lunatic shall be properly taken care of and shall be prevented from doing injury to himself or others, shall make an order for the discharge of such lunatic, and such lunatic shall thereupon be discharged. Act XXXVI. 1858, sect. 10.

Order of discharge on undertaking of relative for due treatment of the lunatic.

4734. The inspector of jails may direct the removal of any lunatic from any public asylum to any other public asylum within the circle of his inspection, and such order shall be sufficient authority for the removal of such lunatic, and also for his reception into the asylum to which he is ordered to be removed. Act XXXVI. 1858, sect. 11.

Inspector of jail may make order of removal from one public asylum to another.

4735. If, after the reception of any lunatic into any asylum, it appear that the order or the medical certificate or certificates upon which he was received is or are defective or incorrect, the same may at any time afterwards be amended by the person or persons signing the same with the sanction of two or more of the visitors of the said asylum, one of whom shall be a medical officer. Act XXXVI. 1858, sect. 12.

Amendment of order or certificate

Order and certificate to justify detention and re capture after escape.

4736. Every person received into a lunatic asylum under any such order as is required by this Act accompanied by the requisite medical certificate, may be detained therein until he be removed or discharged as authorized by this Act, and in case of escape may, by virtue of such order, be re-taken by the manager of such asylum, or any officer or servant belonging thereto, or any other person authorized in that behalf by the said manager, or any police officer, and conveyed to and received and detained in such asylum. Act XXXVI. 1858, sect. 13.

In what cases government to pay for the maintenance of lunatic.

4737. When any lunatic is sent to a licensed asylum by order of a magistrate or commissioner of police under section 4, section 5, or section 6 of this Act, and when a lunatic is admitted into such asylum under section 7, or an order for the reception of a lunatic is made under section 8, and no engagement has been taken from the friends of the lunatic or order made by the judge for the payment of expenses under the said section 7 or section 8 respectively, the expense of the lodging, maintenance, clothing, medicine, and care of such lunatic shall be paid by the government to the manager of such asylum. Act XXXVI. 1858, sect. 14.

Civil court, on application of magistrate, may make order for the payment of cost of maintenance out of the lunatic's estate, or by person bound to maintain him.

4738. The magistrate or commissioner of police by whom any lunatic has been sent to a lunatic asylum, if it appear to such magistrate or commissioner that such lunatic has an estate applicable to his maintenance and more than sufficient to maintain his family, or that any person is legally bound to maintain and has the means of maintaining such lunatic, may apply to the chief civil court of original jurisdiction within the local jurisdiction of which the estate of the lunatic may be situate or the person legally bound to maintain him may reside, and such court shall enquire into the matter in a summary way, and on being satisfied that such lunatic has an estate applicable to his maintenance, or that any person is legally bound to maintain and has the means of maintaining such lunatic, shall make an order for the recovery of the charges of the lodging, maintenance, clothing, medicine, and care of such lunatic out of such estate or from such person. Such order shall be enforced in the same manner and shall be of the same force and effect and subject to the same appeal as any judgment or order made by the said court in a regular suit in respect of the property or person therein mentioned. Any personal property which may be in the possession of a lunatic found wandering at large may be sold by the magistrate and the proceeds thereof (or such part of the same as may be necessary) applied towards the payment of the charges of the lodging and maintenance of the lunatic, and of any other expenses incurred on his behalf. Act XXXVI. 1858, sect. 15.

Enforcement, &c. of order

Property in the possession of a lunatic found wandering.

Saving of liability of relatives to maintain lunatic.

4739. The liability of any relative or person to maintain any lunatic shall not be taken away or affected by any provision contained in this Act. Act XXXVI. 1858, sect. 16.

Saving of powers of supreme court, &c., and of Act IV 1849.

4740. Nothing contained in this Act shall be taken to interfere with the power of any of the courts of judicature established by royal charter over any person found to be lunatic by inquisition or under the provision of Act XXXIV. 1858, or with the rights of any committee of the person or estate of such lunatic, or to affect the provisions of Act IV. 1849. Act XXXVI. 1858, sect. 17.

4741. The word "lunatic," as used in this Act, shall mean and include every person of unsound mind, and every person being an idiot. The word "magistrate" shall include a person exercising the powers of a magistrate. Act XXXVI. 1858, sect. 18.

Interpretation,
"lunatic;"
"magistrate."

CHAPTER VI.

OF COVENANTED OFFICERS.

4742. The whole of the officers of government, employed in the judicial department, civil or criminal, are prohibited, under pain of dismissal from office, from employing directly or indirectly, their private servants of whatever description, or any other persons not being public officers duly appointed or nominated in conformity with the rules in force relative to such appointments, in the discharge of any part of their public duties, or in the execution of any public duty, in which the person so employed has not been duly authorized to act.* Reg. VIII. 1825, sect. 2, cl. 1.

Officers are prohibited from employing their private servants in the execution of any public duty;

* This does not apply to copies made for the use of private individuals. See para. 1914.

4743. The whole of the judicial officers are, in like manner and under the same penalty, prohibited from employing any of the public officers on their establishments (not being peons, or other inferior servants, in personal attendance upon a judge, magistrate, or other officer of government in the judicial department) in the performance of any part of their private business, or in the execution of any private trust relating to their personal concerns. Reg. VIII. 1825, sect. 2, cl. 2.

and from employing public officers (not being peons) in the execution of their private business.

4744. The session judges, and magistrates, and their assistants, or other officers being covenanted servants of the government, are prohibited from lending money, directly or indirectly, to any proprietor or farmer of land, or dependant zumeendar, or under-farmer, or ryot, or their sureties; and all loans made in opposition to this prohibition are declared irrecoverable in any court of judicature. Beng. Reg. XXXVIII. 1793, sect. 2. Ben. Reg. XLVIII. 1795, sect. 2. Ced. Prov. Reg. XIX. 1803, sect. 2.

Covenanted officers are not to lend money to landholders:

4745. All covenanted civil servants, in whatever department of the public service they may be employed, are prohibited, under pain of dismissal from office, from borrowing money from, or in any way incurring debt to, any native officer under their authority, or under the authority of any of their subordinate functionaries, or from or to the known surety, agent, relation, connection, or dependant of any such native officer, or from or to any person of whom such native officer may be known to be or to have been the servant, agent, surety, or dependant. Reg. VII. 1823, sect. 2, cl. 1.

or to incur debt to any native officer under their authority, or to any one personally connected with such officer;

4746. In like manner and under the like penalty, all officers of government, being covenanted civil servants, are prohibited from borrowing from, or in any way incurring debt to, any manager, guardian, executor, ameen, sezawul, gomastah, farmer, mutawalli, or other person who may in any way be officially accountable to them, or from and to the known surety, agent, relation, connection, or dependant of such person. Reg. VII. 1823, sect. 2, cl. 2.

or to any person officially accountable to them;

or to any person residing in, or having property within, their districts.

4747. All judges, magistrates, and assistants to magistrates, are prohibited, under pain of dismissal from office, from borrowing money from, or in any way incurring debt to, any zumeendar, talookdar, ryot, or other person possessing real property, or residing in, or having a commercial establishment within the city, district, or division, to which their authority extends. Reg. VII. 1823, sect. 3.

No money is to be lent to such officers contrary to the above rules, under pain of a certain penalty.

4748. All persons are prohibited from lending money, or otherwise becoming in any way creditor to any officer of government, being a covenanted civil servant, in contravention of the above rules : and any person lending money, or in any way becoming creditor, to any such public officer in breach of this prohibition, is to forfeit to government a sum equal to the amount for which he has so illegally become creditor. Reg. VII. 1823, sect. 4.

Officers receiving new appointments if indebted to any individual, contrary to the above rules, to report.

4749. If any covenanted servant, who may be hereafter appointed to any office, shall at the time of such appointment be indebted to any person with whom it would be illegal for him to contract a loan, while holding such office, it shall be incumbent on such servant, before entering on the duties of such office, to make known the circumstance to government ; and failing to do so, he is to be subject to the same penalty, as if the debt had been contracted subsequently to his being appointed to the said office. Reg. VII. 1823, sect. 6.

No person being a creditor of any officer is to be appointed to any official situation on his establishment.

4750. No person being a creditor of any judge or magistrate is to be appointed to any official situation on the establishment of the person whose creditor he is. It is consequently the duty of the superior authorities, on receiving the prescribed reports, to satisfy themselves fully that the natives, recommended to fill any vacancies on the establishments of the European officers acting under their control respectively, are not the creditors of the latter. With this view it is the duty of such authorities to make full inquiries on the subject, not only from the officers from whom such reports are received, but through such other channels as are necessary to guard against any infringement or evasion of these provisions. Reg. XXI. 1814, sect. 2.

Precautions to be taken against such appointments.

This rule applicable equally to the relatives and dependants of such creditors.

4751. The rules contained in the preceding section, for precluding the creditors of the public officers above-mentioned from being employed on their public establishments, are to be considered equally applicable to the relatives and dependants of such creditors : the former as well as the latter are consequently equally precluded from being employed on the establishments of any of the public officers above described. Reg. XXI. 1814, sect. 3.

Penalty on natives knowingly taking office in contravention of these rules.

4752. Any native causing himself to be appointed to any office in opposition to the provisions of Reg. XXI. 1814, or in any way knowingly accepting office in contravention thereof, is to forfeit to government a sum equal to ten times the yearly salary or allowances attached to the situation, to which he is appointed. Reg. VII. 1823, sect. 7.

Penalties to be enforced by prosecution at the suit of government.

4753. Suits for the recovery of penalties incurred under this regulation are to be instituted under the special instructions of government, and are to be conducted by the superintendent and remembrancer of legal affairs, or by such other officer as government may nominate for that purpose ; such suits are to be instituted in the provincial court of the jurisdiction within which the transaction has taken place, or the lender resides, or possesses real or personal property. An appeal lies from judgments passed in such cases, in like manner as from other judgments passed in original suits by the provincial courts ;

and the judgments are to be enforced under the provisions of the regulations for the execution of other decrees of the civil courts. Reg. VII. 1823, sect. 8.

4754. Where an officer continued for many months to draw a sum of money granted for a specific object, when that object had been otherwise provided for, and thus appropriated to his own use a sum to which he had no title in as much as it should have been immediately saved to the state, the Court of Directors, after severely censuring the conduct of the officer in question, intimated that any such delinquencies would in future be punished by dismissal from the service of government. C. O. Sup. Pol. *L. P.* No. 4 of 1851. C. O. No. 62 of vol. 4. *L. P.*

Allowances granted for specific purposes.

4755. Officers of government, of whatever rank or class, are absolutely prohibited from selling, or being concerned in the sale of, property of any amount or description to native princes and chiefs, or to their relatives or ministers, or to any native gentleman of rank or opulence, residing under the protection of the British government. Any disobedience of these orders will be followed by the displeasure of government, and by such other penalty as the circumstances of the case may demand. Notification of the Government of India, No. 3200, July 25, 1854.

Sales to natives of rank or opulence forbidden.

4756. Persons in public authority are not to borrow boats, elephants, &c. from the natives: a commissioner of circuit was considered to have been rightly censured for applying to a zumeendar for the gratuitous use of his budgerow. Letter from the Court of Directors, December 23, 1833.

Borrowing boats &c. from natives.

4757. The custom of natives presenting nazars in money, trays of fruit, and other articles, on the occasion of their paying official or complimentary visits to public functionaries in the service of the government, is strictly prohibited: and such officers are to adopt every measure within their power to make this prohibition generally known and obeyed by all natives of whatever rank or degree, with whom they have official or private intercourse. Govt. Resolution, June 2, 1829.

Nazars are prohibited.

4758. All officers of government are prohibited from receiving complimentary addresses from parties with whom they have been officially connected. C. O. Sup. Pol. *L. P.* No. 9 of 1851. C. O. No. 69 of vol. 4. *L. P.*

Receipt of complimentary addresses forbidden.

4759. Members of the civil service may become shareholders in Assurance and other companies; but, as the occupations of a private institution cannot be allowed to interfere with the claims of the public service to the undivided attention of the servants of government, they are positively interdicted from taking any part in the management of such companies. This interdict does not, however, apply to the Asiatic, the Agricultural, or other such Societies, which cannot in any way be looked upon as trading establishments. See Bengal and Agra Guide, 1842, vol. 1, part 1, page 304.

Private trading.

4760. The following is an extract from an order of government, dated September 5, 1839.—“It remains for the governor general to express his general sentiments on a point which has evidently been instrumental in producing dissensions between officers, whose bounden duty to the government, which they serve, it was, and always must be, to merge all personal feelings and official pretensions in zeal for the public interest. The matter to

Private disputes interfering with the due discharge of public duties.

which his lordship alludes is that tenaciousness of their own authority and readiness to interfere with the authority of other distinct functionaries, which make those, who are most sensitive of any encroachment on their own power and prerogative, the very persons likely to infringe the just and proper authority of others. To cavil about trifles in the intercourse of official life, betrays not more the absence of generous and highminded principles, than a readiness to postpone to selfish considerations the performance of duties owing to the state. Every indulgence in harsh and acrimonious language in official correspondence falls under this censure, and no one can in any degree give way to it without losing somewhat of the confidence, which government would otherwise have placed in his judgment and discretion, as detracting from his trustworthiness, and even lessening his claims to high and confidential employment. The government has the strongest reason to expect that every one of its servants, to whom it confides the discharge of responsible duties, will, from the moment of assuming such charge, discard all private feelings of pique and animosity, that may interfere with the impartial and unprejudiced performance of public duty, and will manifest a spirit superior to the influences of party or personal motives. Those who appear ready to sacrifice their public duty to the indulgence of private resentment, can have little right to look for future patronage or distinction."

Friendly intercourse required to be cultivated with respectable Europeans and natives.

4761.* All officers ought to cultivate a friendly intercourse with persons of respectability and influence, both European and native, residing in the district. Without prescribing the precise manner in which such intercourse may best be carried on, government desires to impress the officers of the covenanted service with a sense of the peculiar obligation they are under to show courtesy and attention towards all who are brought in connection with them, and not only to feel an interest in the improvement and prosperity of the district and its inhabitants, but to take the lead in all measures designed for promoting those objects. Order Govt. Bengal, April 21, 1854.

Reports on the official character and conduct of the several public functionaries.

4762. The following rules for reporting on the official character and conduct of the several public functionaries were promulgated for the information and guidance of all officers. The objects in view are: firstly, the carrying into effect the principle of enforcing responsibility in all superior functionaries for the incapacity, or neglect, or wrongs committed by the civil servants under them, unless they are, as the cases may admit, either redressed or reported to government: secondly, the bringing to the knowledge of government all instances of eminent merits and qualifications amongst its covenanted officers of all ranks; so that the government may be enabled, generally, to reward merit, to stimulate exertion, and to secure to the public service for vacant offices the best qualifications available.—In hearing appeals and cases sent from the sessions courts, every judge of the nizamat adawlut is to note, as each case proceeds, any points that strike him as affecting materially the character of the court below; and whenever, at the conclusion of a case, any judge is of opinion that the proceedings of such a court have been either remarkably well, or remarkably ill conducted, it is his duty to make a note thereon for the consideration of the court collectively at their English sitting. The court is to determine in what manner these notes may best be made available, in the preparation of their annual report,

The individual judges of the nizamat adawlut are to furnish notes on the cases submitted by the session judges; and the collective opinion of the court is to be expressed in their annual report.

for the expression of their collective opinion on the quality of the business performed by every session judge. The nizamut adawlut is required to make a special report on the subject of any zillah, in which they are of opinion that the state of business is such as to make it desirable, for the sake of the public interests, that measures should be immediately taken to remedy the evil. In cases of less importance, it is the duty of the court to notice in their annual report any serious defect which they believe to exist in the administration of justice in any district under their jurisdiction.—It is the duty of the several commissioners of circuit to report, in their periodical police returns, their opinions on the general efficiency of the police of each district under their superintendence, and on the manner in which the various business in this department has been performed by each of the officers among whom it is distributed. It is also the duty of each commissioner to notice prominently in these reports the extent to which the services of the assistants to the magistrates and joint magistrates in his division have been employed, and the consequences of such employment, in order that the application and abilities of the several officers in the junior grades of the service may be brought distinctly under the view of the government.—It is the duty of the sudder court, of the commissioners, and of the magistrates and joint-magistrates, to report to their immediate superior every case in which they are of opinion that a covenanted officer, subordinate to them, is decidedly disqualified to discharge efficiently the duties entrusted to him; and it is hereby notified to all such functionaries that it is considered an essential part of their duty to make themselves acquainted with the manner in which their subordinate officers perform their duties, and that they themselves will be held responsible for any mischievous consequences that may result from any inefficiency, bad habits, or serious errors of conduct of those under them, that ought to have been known to them, unless they report the same for the information of their superiors. Govt. Notification, December 20, 1836. C. O. *W. P.* No. 222, *I. P.* No. 227, of vol. 2.

In special cases an immediate report of the state of any zillah is to be submitted to government: otherwise, serious defects are to be noted in the annual report.

Reports on the state of the police.

All officers are to report if a subordinate is decidedly disqualified to discharge his duties efficiently: if they fail to report they are themselves to be held responsible.

4763. Officers submitting explanations from their subordinates are invariably to state whether they consider the same to be sufficient and satisfactory, or otherwise. C. O. No. 219 of vol. 2.

Opinion to be expressed of explanations from subordinates.

4764. Whenever the government shall be of opinion that there are good grounds for making a formal and public inquiry into the truth of any imputation of misbehaviour by any person in the service of the government not removable from his office without the sanction of the government, it shall cause the substance of the imputations to be drawn into distinct articles of charge, and shall order a formal and public inquiry to be made into the truth thereof. Act XXXVII. 1850, sec. 1.

Charges against.

Government may draw up distinct charges, and order a public enquiry.

4765. The inquiry may be committed either to the court, board, or other authority to which the person accused is subordinate, or to any other person or persons to be specially appointed by the government commissioners for the purpose: notice of which commission shall be given to the person accused ten days at least before the beginning of the inquiry. Act XXXVII. 1850, sect. 3.

By whom the enquiry is to be conducted.

Notice to the accused.

4766. When the government shall think fit to conduct the prosecution, it shall nominate some person to conduct the same on its behalf. Act XXXVII. 1850, sect. 4.

Government prosecutor.

Accuser to reduce accusation to writing and to verify it by his oath.

4767. When the charge shall be brought by an accuser, the government shall require the accusation to be reduced to writing, and verified by the oath or solemn affirmation of the accuser, and every person who shall wilfully and maliciously make any false accusation under this Act, upon such oath or affirmation, shall be liable to the penalties of perjury: but this enactment shall not be construed to prevent the government from instituting any inquiry, which it shall think fit, without such accusation on oath or solemn affirmation as aforesaid. Act XXXVII. 1850, sect. 5.

Accuser to give security, if the conduct of the prosecution is left to him.

4768. Where the imputations shall have been made by an accuser, and the government shall think fit to leave to him the conduct of the prosecution, the government before appointing the commission shall require him to furnish reasonable security that he will attend and prosecute the charge thoroughly and effectually, and also will be forthcoming to answer any counter-charge or action which may be afterwards brought against him for malicious prosecution or perjury or subornation of perjury, as the case may be. Act XXXVII. 1850, sect. 6.

Government may abandon, and accuser continue prosecution at any stage.

4769. At any subsequent stage of the proceedings, the government may, if it think fit, abandon the prosecution, and in such case may, if it think fit, on the application of the accuser, allow him to continue the prosecution, if he is desirous of so doing, on his furnishing such security as is hereinbefore mentioned. Act XXXVII. 1850, sect. 7.

Commissioner's power in case of contempt, and in summoning witnesses &c.

4770. The commissioners shall have the same power of punishing contempts and obstructions to their proceedings, as is given to civil and criminal courts by Act XXX. 1841, and shall have the same powers for the summons of witnesses, and for compelling the production of documents, and for the discharge of their duty under the commission and shall be entitled to the same protection, as the zillah and city judges; except that all process to cause the attendance of witnesses, or other compulsory process, shall be served through and executed by the zillah or city judge, in whose jurisdiction the witness or other person resides, on whom the process is to be served; and if he resides within Calcutta Madras, or Bombay, then through the supreme court of judicature there. When the commission has been issued to a court, or other person or persons having power to issue such process in the exercise of their ordinary authority, they may also use all such power for the purposes of the commission. Act XXXVII. 1850, sect. 8.

Penalty for disobeying process.

4771. All persons disobeying any lawful process issued as aforesaid for the purpose of the commission shall be liable to the same penalties, as if the same had issued originally from the court or other authority, through whom it is executed. Act XXXVII. 1850, sect. 9.

Copy of charge &c., to be given to accused.

4772. A copy of the articles of charge, and list of the documents and witnesses by which each charge is to be sustained, shall be delivered to the person accused, at least three days before the beginning of the enquiry, exclusive of the day of delivery, and the first day of the inquiry. Act XXXVII. 1850, sect. 10.

Accused to plead to each charge.

4773. At the beginning of the inquiry, the prosecutor shall exhibit the articles of charge to the commissioners, which shall be openly read, and the person accused shall thereupon

be required to plead 'guilty' or 'not guilty' to each of them, which pleas shall be forthwith recorded with the articles of charge. If the person accused refuses, or without reasonable cause neglects to appear, to answer the charge either personally or by his counsel or agent, he shall be taken to admit the truth of the articles of charge. Act XXXVII. 1850, sect. 11.

Refusal or neglect to appear considered as admission of truth of charge.

4774. The prosecutor shall then be entitled to address the commissioners in explanation of the articles of charge, and of the evidence by which they are to be proved : his address shall not be recorded. Act XXXVII. 1850, sect. 12.

Prosecutor's address.

4775. The oral and documentary evidence for the prosecution shall then be exhibited : the witnesses shall be examined by or on behalf of the prosecutor, and may be cross-examined by or on behalf of the person accused. The prosecutor shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without leave of the commissioners, who also may put such questions as they think fit. Act XXXVII. 1850, sect. 13.

Evidence for the prosecution.

4776. If it shall appear necessary before the close of the case for the prosecution, the commissioners may in their discretion allow the prosecutor to exhibit evidence not included in the list given to the person accused, or may themselves call for new evidence ; and in such case the person accused shall be entitled to have, if he demand it, an adjournment of the proceedings for three clear days, before the exhibition of such new evidence exclusive of the day of adjournment and of the day to which the proceedings are adjourned. Act XXXVII. 1850, sect. 14.

If further evidence be required for the prosecution.

4777. When the case for the prosecution is closed, the person accused shall be required to make his defence, orally or in writing, as he shall prefer. If made orally, it shall not be recorded ; if made in writing, it shall be recorded, after being openly read, and in that case a copy shall be given at the same time to the prosecutor. Act XXXVII. 1850, sect. 15.

Defence may be made orally or in writing.

4778. The evidence for the defence shall then be exhibited, and the witnesses examined, who shall be liable to cross-examination and re-examination and to examination by the commissioners according to the like rules as the witnesses for the prosecution. Act XXXVII. 1850, sect. 16.

Evidence for defence.

4779. All witnesses, either for the prosecution or defence, shall be examined on oath, or, if exempt from taking an oath in courts of justice, on solemn affirmation, to be administered in either case by one of the commissioners, and every witness so examined and wilfully giving false evidence on any material point shall be deemed guilty of and liable to the penalties of perjury. When the prosecution is not conducted on behalf of government, the prosecutor may himself give evidence for the prosecution and may be examined for the defence. Act XXXVII. 1850, sect. 17.

Witnesses to be examined on oath or affirmation. Private prosecutor may be examined.

4780. The commissioners or some person appointed by them shall take notes in English of all the oral evidence, which shall be read aloud to each witness by whom the same was given, and if necessary explained to him in the language in which it was given, and shall be recorded with the proceedings. Act XXXVII. 1850, sect. 18.

Notes to be taken of all oral evidence.

Prosecutor may
reply or call for
the evidence. If
evidence be written
or supported by
evidence.

4781. If the person accused makes only an oral defence, and exhibits no evidence, the inquiry shall end with his defence; if he records a written defence, or exhibits evidence, the prosecutor shall be entitled to a general oral reply on the whole case, and may also exhibit evidence to contradict any evidence exhibited for the defence, in which case the person accused shall not be entitled to any adjournment of the proceedings, although such new evidence were not included in the list furnished to him. Act XXXVII. 1850, sect. 19.

Articles of charge
may be amended.

4782. When the commissioners shall be of opinion that the articles of charge, or any of them, are not drawn with sufficient clearness and precision, the commissioners may, in their discretion, require the same to be amended, and may thereupon, on the application of the person accused, adjourn the inquiry for a reasonable time. The commissioners may also, if they think fit, adjourn the inquiry from time to time, on the application of either the prosecutor or the person accused, on the ground of the sickness or unavoidable absence of any witness or other reasonable cause. When such application is made and refused, the commissioners shall record the application, and their reasons for refusing to comply with it. Act XXXVII. 1850, sect. 20.

Report of inquiry
to be made to go-
vernment.

4783. After the close of the inquiry, the commissioners shall forthwith report to government their proceedings under the commission, and shall send with the record thereof their opinion upon each of the articles of charge separately, with such observations as they think fit on the whole case. Act XXXVII. 1850, sect. 21.

Government may
require further evi-
dence; or refer
report for opinion.

4784. The government, on consideration of the report of the commissioners, may order them to take further evidence, or give further explanation of their opinions. It may also order additional articles of charge to be framed, in which case the inquiry into the truth of such additional articles shall be made in the same manner as is herein directed with respect to the original charges. When special commissioners have been appointed, the government may also, if it thinks fit, refer the report of the commissioners to the court or other authority to which the person accused is subordinate, for their opinion on the case; and will finally pass such orders thereon as appear just and consistent with its powers in such cases. Act XXXVII. 1850, sect. 22.

Final orders.

Meaning of word
government.

4785. The word 'government' as used in this Act means the governor general in council, the governor or deputy governor of the Presidency of Fort William in Bengal, and the lieutenant governor of the North-Western Provinces of Bengal, whose sanction is necessary for the removal of the person accused. Act XXXVII. 1850, sect. 23.

Application of
Act.

4786. Nothing in this Act shall be construed to repeal any Act or Regulation in force for the suspension or dismissal of principal and other sudder ameens or of deputy magistrates or deputy collectors; but a commission may be issued for the trial of any charge against any of the said officers, under this Act, in any case in which the government shall think it expedient. Act XXXVII. 1850, sect. 24.

Power of go-
vernment to sus-
pend or remove
any public servant
without inquiry
under the Act.

4787. Nothing in this Act shall be construed to affect the authority of government, for suspending or removing any public servant for any cause without an inquiry under this Act. Act XXXVII. 1850, sect. 25.

